OVERSIGHT OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

HEARING

BEFORE THE

COMMITTEE ON LABOR AND HUMAN RESOURCES UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

EXAMINATION OF CERTAIN FINANCIAL MANAGEMENT PRACTICES WITHIN THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

JUNE 15, 1982

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OVERSIGHT OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

TUESDAY, JUNE 15, 1982

U.S. SENATE,
COMMITTEE ON LABOR AND HUMAN RESOURCES,
Washington, D.C.

The committee met, pursuant to notice, at 9:39 a.m., in room 4232, Dirksen Senate Office Building, Senator Orrin Hatch (chairman of the committee) presiding.

Present: Senators Hatch and Nickles.

The CHAIRMAN. The committee will be in order.

Today's hearing has three purposes: First, to review the financial, program, and management problems of the EEOC; second, to review what corrective steps have been taken to correct identified problems; and third, to review the agency's goals and objectives for the next 2 years.

A year ago April, this committee set as one of its major oversight goals the review of the Federal Government's effort to further two important national goals: One, the elimination of illegal discrimination, and, two, the improvement of employment opportunities for women and minorities.

As a method for achieving this end, the committee examined the activities of the EEOC and OFCCP. GAO reports that more than 87 agencies administer equal opportunity programs throughout the Federal establishment, but the EEOC and the OFCCP have the major responsibility for furthering these national goals.

This past April we completed our review of the Executive Order 11246 program, the affirmative action program, as administered by the OFCCP, and we released a report which contained recommendations for improving the program. It also called for a clearer delineation between the role of the EEOC and the OFCCP and called for an effective EEOC.

This hearing today culminates a similar, though less detailed, review of the EEOC.

Without objection, I will put the balance of my statement in the record at this point. I believe it has been passed out.

[The opening statement of Senator Hatch follows:]

OPENING STATEMENT OF SENATOR HATCH

The CHAIRMAN. In July of 1981, the committee became aware of critical management and financial problems in the EEOC which needed immediate attention. I requested the GAO to conduct a thorough and immediate financial audit of that agency and report its findings as soon as possible. Three months later, in October of 1981, they provided the committee with an interim report which found the agency in financial chaos. The books could not be audited, reports were unreliable, receivables and payables were mismanaged, fund controls were inadequate, and transactions went unrecorded. There were over $27 million in unliquidated obligations, over $9 million in error transactions, and over $1 million in outstanding travel advances which have not been collected from staff.

Today, I am releasing the GAO's final report of that audit and it documents a dismal record of that agency's past attempts to come to grips with its management problems. The report is almost a repeat of the study GAO completed a decade ago in 1976 and which the EEOC at that time said it would use in improving the agency. The 1976 report found the agency in violation of the Anti-Deficiency Act and recommended the EEOC adopt a new financial management system. In 1978 the new system was started. It was never managed properly, however, and since then, management seems to have disregarded the recommendations and the problems have become compounded.

The final report, aside from reporting the agency's inability to keep accurate records, raises more serious questions about the integrity of past management and of possible violations of the law. For example, the audit revealed that the EEOC entered into year-end agreements with civil rights groups whereby money was loaned or advanced to private attorneys to try civil rights cases on behalf of individuals. Such agreements go beyond congressional intent.

The amount totaled over $1.2 million with at least one-third of that being kept by the group with whom the agreement was made. Furthermore, EEOC obligated funds in one fiscal year to cover future needs for the following year. Finally, the most flagrant violation found was that the EEOC managers were certifying annual reports knowing they were inaccurate.

Because of the serious nature of their findings and because we want to correct the problems identified, I have requested the GAO auditors to testify this morning. We need to get to the bottom of these allegations and be sure it does not happen again.

In addition to the financial management problems, other GAO reports have found administrative and program problems within the EEOC which need correcting if the agency is to be effective. These include the questionable methods used by EEOC in settling charges, their backlog versus frontlog which distorts the caseload picture, the low number of cases handled by attorneys—they average three cases—the EEOC's delay in filing suits or closing cases, its duplication of OFCCP's function with its systemic program, its poor record of monitoring unions, and poor management of personnel and equipment, to name a few. These and other problems are well documented in the following GAO reports:

One. "Equal Employment Opportunity Commission Needs To Improve Its Administrative Activities" (HRD-81-740, April 21, 1981).

Two. "Further Improvements Needed in EEOC Enforcement Activities" (HRD-81-29, April 9, 1981).

Three. "Financial Management Problems at the EEOC" (AFMD-882-17, October 30, 1981).

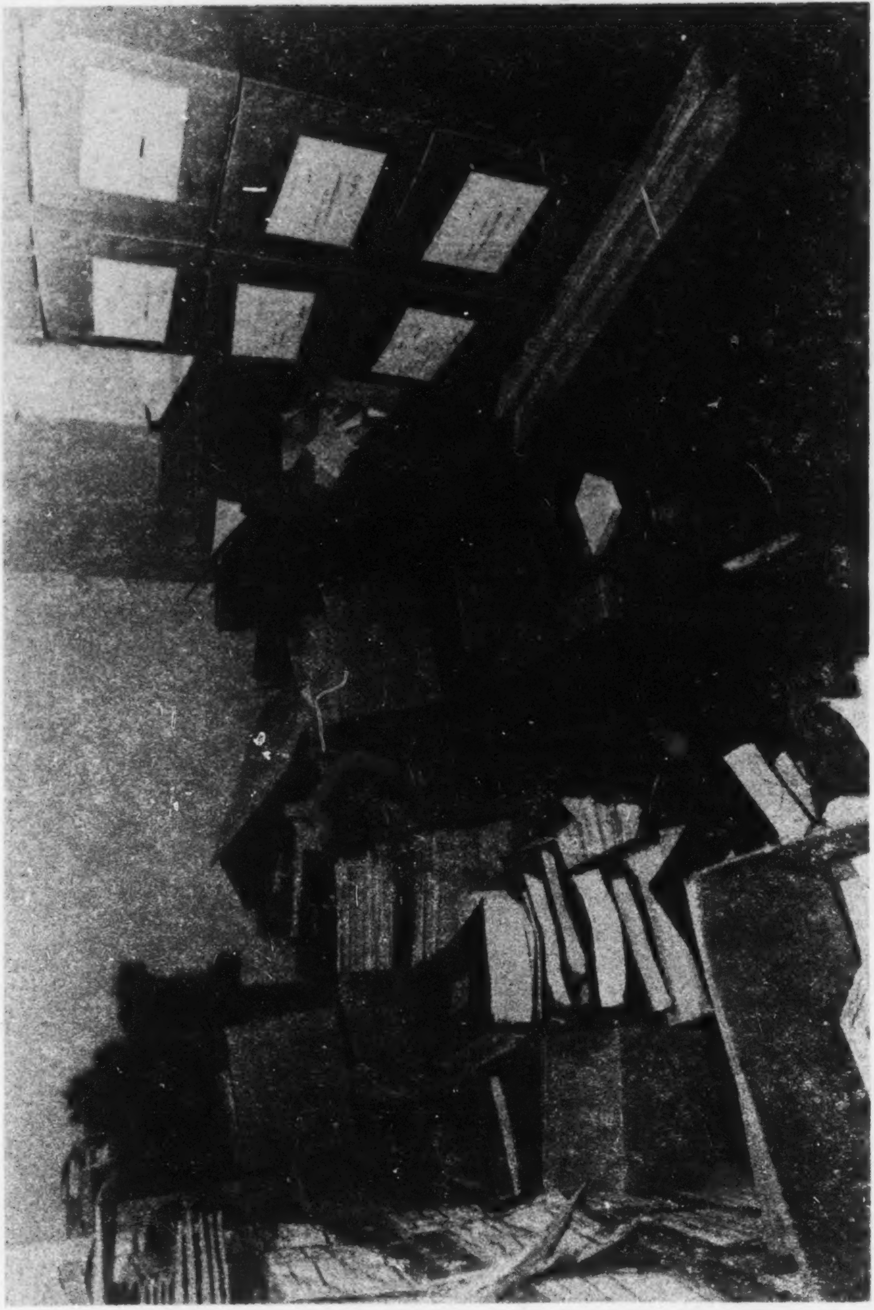
Four. "Federal Efforts To Increase Minority Opportunities in Skilled Construction Craft Unions Have Had Little Success" (HRD-79-13) March 15, 1979.

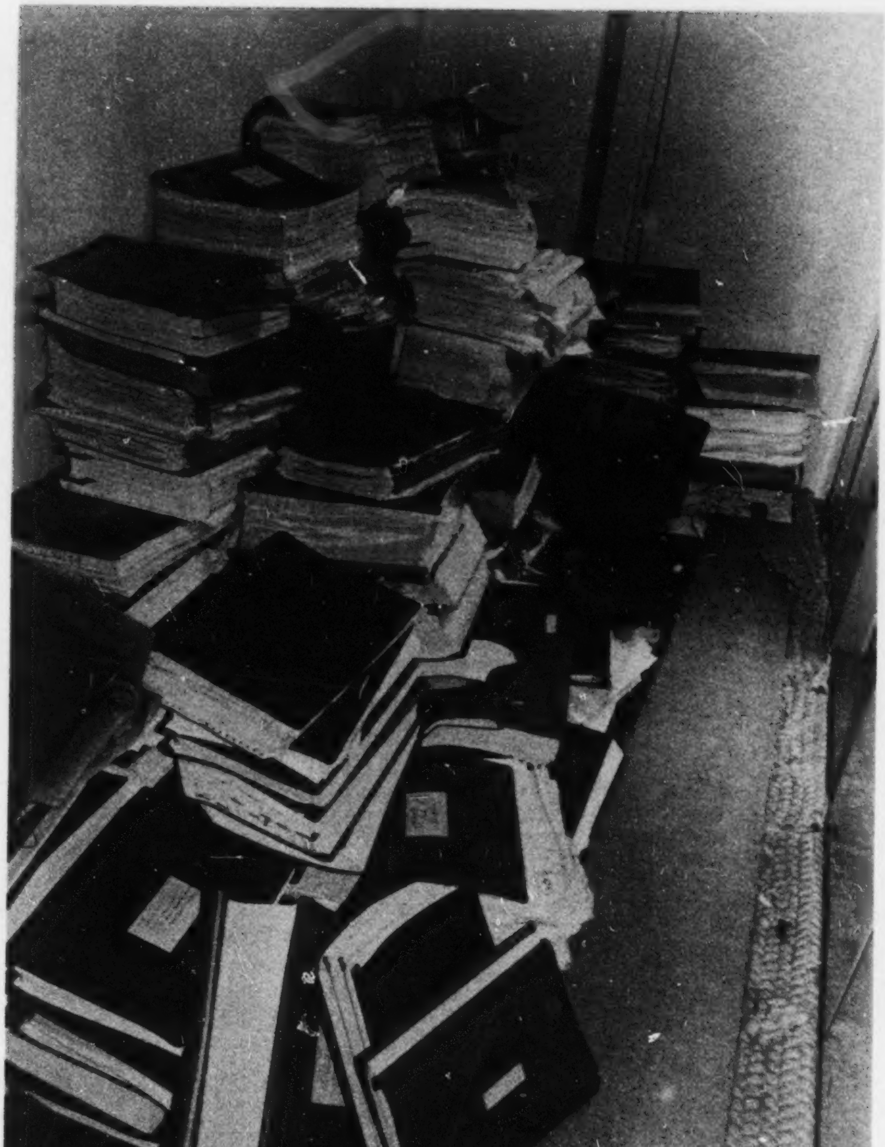
This administration and this committee have been criticized for a lack of a commitment to civil rights, yet the record speaks otherwise. This committee has undertaken a long study, including 9 days of hearings covering affirmative action and sex discrimination. It has recommended solutions for furthering our national goals of eliminating discrimination and increasing opportunities for women and minorities.

Our goal has been that of increasing the country's efforts at pursuing those goals. Unfortunately, because we ask critical questions such as the ones which I have raised today and have taken the studies of GAO seriously, we are accused of being anti-civil rights. I must question whether those who criticize are also the same as those who would allow the conditions which the GAO revealed at EEOC to continue, thereby denying services to the people who need the assistance for which the agency was created.

In addition, this committee has worked closely with the administration's new appointees in taking hold of the problems. For example, Commissioner Shattuck, in her first 2 months as ACTION Director, managed to start proper accounting procedures, and for the first time in several years the agency is able to reconcile its monthly accounts. I have with me photographs of the conditions of the financial records room which I am submitting for the record. They clearly demonstrate the chaos and irresponsible management at EEOC. Yet I am told the responsible administrators for these offices received bonuses up to $5,000 for "outstanding performance."

[The photographs referred to follow:]





The **Chairman**. In addition, Commissioner Shattuck has managed to begin making the Office of Review and Appeals more efficient in processing grievances which have been backlogged. I understand that in the past, attorneys managed to make only two decisions a week. In short, what is evident is that the new administration is taking hold of the agency and correcting problems which have gone uncorrected.

Such action strikes me as evidence of an administration that takes civil rights seriously. On the other hand, one must ask the question of why past administrators came and asked this committee for more funds when they did not know how much they already had. On December 19, 1982, Acting Chairman Clay Smith provided me with an update of that agency, and on May 10 Acting Chairman Shattuck responded to a series of questions on progress being made at EEOC. I am submitting both documents for the record. Ms. Shattuck's response demonstrates the positive manner in which this administration is moving forward.

I have asked Chairman Clarence Thomas to come before this committee today to begin reviewing with us what goals and objectives he is planning for the coming year, and he was quick to accommodate our request. I appreciate his eagerness, especially given that he has held office for less than a month. During his confirmation hearing, I requested that he keep up the momentum the new Commission appointees had achieved. Looking at his written statement leads me to believe he is a quick learner.

While it is important that we review the problems of the agency, it is even more important that we examine where we want to go and how we're going to get there. As we have done with OFCCP, we plan to review EEOC's progress every 6 months. This will assure that our problems are being worked on rather than being ignored. More important, it will assure that our agencies are kept sharp as problem-solving tools rather than monuments to old ideas and old solutions.

We will go to our first witness, Mr. Wilbur D. Campbell, the Acting Director, Accounting and Financial Management Division of the General Accounting Office.

Mr. Campbell, we are delighted to have you here today. We appreciate you and your associates being willing to testify here today on this very important subject.

Now, I will have to apologize. I am managing the bill on the floor that will come up about 10 o'clock. I am trying to get Senator Nickles, who I think will be here, to spell me. If he is not, I am going to have to have my counsel, Mr. Flores, ask my questions so we can build this record today. It is just one of those things that I just cannot seem to avoid. In fact, probably the next three or four major things on the floor, will require me to be there almost every minute. The balanced budget amendment comes up next, and I will be floor manager of that as well.

So I will have to apologize in advance for not being able to be here past about 10 o'clock this morning.

STATEMENT OF WILBUR D. CAMPBELL, ACTING DIRECTOR, ACCOUNTING AND FINANCIAL MANAGEMENT DIVISION, GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY JAMES CURRY, ORAL BUTCHER, AND ROBERT H. HUNTER

The **Chairman**. I wonder, Mr. Campbell, most of the people have your statement as well. Would it be possible for me to move right to questions with you, just put your statement in the record?

Mr. **Campbell**. Absolutely, Mr. Chairman.

The **Chairman**. All right. Without objection, then, we will put your statement in the record, and I will just move to some questions because I would like to get some questions out before I leave here this morning.

Now, as I understand, there are really about four critical areas covered in your report, and I would like to examine each of them in greater detail.

First, you have made it quite clear that the agency has not maintained accurate and up-to-date financial records which are capable of showing how much money the EEOC has at any given time, how much it owes and how much it is owed.

Second, the report indicates that the EEOC has not implemented the necessary audit controls to insure that its records are being maintained accurately and that the few controls which do exist have been ignored.

Third, the agency has engaged in a highly questionable "loan" program in an attempt to finance private title VII suits at a time when its own staff was not working to capacity.

Finally, the financial disarray of the EEOC forced senior financial staff and apparently others in the line of command to make manual adjustments to the yearend reports for the fiscal years 1980-81, even though these individuals knew that these adjustments were unsupported and improper.

Now, all of these issues require further examination. Did I fairly and accurately state them?

Mr. **Campbell**. Yes, sir, you did.

The **Chairman**. Your report points out that the EEOC's accounting records and reports are unreliable. How long has this condition existed?

Mr. **Campbell**. For quite a number of years, Mr. Chairman. Our last report in 1976 disclosed a number of problems with fiscal year 1974 transactions. Our most recent report dealt with 1980-81, and we found that a lot of the conditions noted in the 1974 era continued to exist over this period of time.

The **Chairman**. As of the end of fiscal year 1981, how much was owed by the Commission? In other words, what was the size of the agency's unliquidated debt?

Mr. **Campbell**. For 1981, about $30 million, and for 1980, about $27 million.

The **Chairman**. So really a total of about $57 million for the 2 years.

Mr. **Campbell**. Well, those numbers are cumulative, Mr. Chairman. In other words, the total obligations as of 1980 were $27 million for prior years forward. By 1981, they had increased another $3 million.

The **Chairman**. They came up to $30 million. I see.

You have testified that the Commission has failed to keep accurate records, and I presume that this failure may affect the figures you have just given. How much money do you think the Commission really owes?

Mr. **Campbell**. It is almost impossible to tell. They have not validated the obligations as required under section 1311. We suspect there is a wide range. For example, over $9 million of that data relates to obligations prior to 1979, some of that going back as early as 1974, so there is some question about whether or not any debtor would let a debt go that long.

In addition, you have a statute of limitations running of about 6 years against Federal debts.

The **Chairman**. According to law, the Commission cannot use the $30.1 million for current-year operating costs. Am I correct in that?

Mr. **Campbell**. That is correct; prior years only.

The **Chairman**. Now, does the Commission have the necessary controls to insure that these funds are not used to exceed budgetary limits imposed by Congress?

Mr. **Campbell**. No, sir. There are controls designed into the accounting system, but because of the manner in which it is being implemented, the controls do not exist.

The **Chairman**. As I understand it, there have been instances of people and contractors who were owed money by the Commission having to wait more than a year in order to get paid. Is that correct?

Mr. **Campbell**. Yes, sir. We noted a number of such examples.

The **Chairman**. Are you familiar with a case involving the Hertz Corp. in Oklahoma City?

Mr. **Campbell**. Somewhat, yes, sir, we are.

The **Chairman**. I understand that the company finally hired a collection agency to get the money it was owed. I also understand that some companies were paid only after they contacted their Senators and Congressman. Now, is this a common problem for those owed money by the Federal Government that they have to use the Congress to receive payment or hire collection agencies?

Mr. **Campbell**. The Government, as a general rule, does a reasonable effort in paying its debts, but in this case we noted a number of instances where debtors had to go to their Congressmen, either Senators or Representatives, and get assistance. We know of cases where they have had to resort to an attorney to help.

The **Chairman**. Why isn't the Commission paying these bills on time, in your opinion?

Mr. **Campbell**. I don't mean to imply that every bill is not paid on time, but it is simply that there is inadequate documentation to match up, for example, the invoice against the voucher. In some cases, it is as simple as not having typists available to type up the vouchers.

The **Chairman**. You stated that accounting record differences were not reconciled and that accounting transactions were not promptly and correctly recorded over the last several years. Have these conditions persisted?

Mr. **Campbell**. There has really been a lack of emphasis on the part of EEOC, Mr. Chairman. The automated system has internal edits to provide internal controls, and when an invalid transaction is inputted as rejected, it should be carefully researched, corrected, and reinputted.

EEOC in the past chose to ignore those transactions and let them pile up to the point where, I think, from about November 1980 to September 1981, they had increased from about 360 rejected cases to over 4,000 transactions that had been rejected and not reentered into the accounting system.

The CHAIRMAN. What possible adverse impact do unsupported adjustments have? Could fraudulent expenditures not be detected?

Mr. CAMPBELL. It provides an ideal environment which is conducive to improper actions. By bypassing the internal controls built into the system, it certainly creates an environment where it is possible.

Manual adjustments also could result in improper transactions being forced into the system, which distorts the financial results.

The CHAIRMAN. Would you give us the name of the chief financial officer who was responsible for the accounting system at the EEOC during this period?

Mr. CAMPBELL. Mr. Lefford Fauntleroy, who was the director of the Finance and Accounting Division.

The CHAIRMAN. I see. You mentioned that the Commission records did not accurately show the receivables; that is, the money owed to the Commission that it should be collecting from its own employees and other sources. Did you establish the amounts actually owed the Commission?

Mr. CAMPBELL. We did not, Mr. Chairman. It would be a monstrous task. For example, of the $1.1 million outstanding advances representing travel advances, we would have to examine each and every advance, and there are something like 2,200 advances, in order to determine what the correct amount should be.

The CHAIRMAN. Could you provide examples of the types of receivables not recorded on the Commission's records?

Mr. CAMPBELL. Yes; I can provide a couple. One example is related to the agreement under which loans and grants were made to private attorneys handling allegations of unlawful employment practices. This was about $300,000.

Another example related to audit-questioned contact payments which had been questioned by the internal audit staff.

The CHAIRMAN. You had indicated that there were about $1.1 million in outstanding travel advances to Commission employees, and that represents moneys which should be recovered as well, right?

Mr. CAMPBELL. Well, not totally. Some of those advances represent travel that has actually been performed but for which no voucher has yet been submitted. Some of that is very old stuff and should be collected, yes, sir.

The CHAIRMAN. I see. I understand that members of the audit team investigated some of the travel voucher cases in depth, and I believe one related to an employee named Ronald Crenshaw. I understand that he had over $2,570 in outstanding travel advances at the time of your interim report. What was the nature of his travel?

Mr. CAMPBELL. Mr. Crenshaw was traveling on union business. He is an EEOC employee, but he is a union representative, and our records show that he owed $2,570 in advances.

The CHAIRMAN. How long has he owed that money?

Mr. CAMPBELL. Several years. I believe the figure was 28 advances, and he has filed something like 5 vouchers in that period of time.

The CHAIRMAN. And you are saying that these dollars were charged to the Government for work that he was doing that was not Government related?

Mr. CAMPBELL. No; it was Government related. He is an employee of the EEOC, but he is a union representative and presumably traveling on union business to be reimbursed by the Federal Government.

The CHAIRMAN. So you are saying he should have been reimbursed by the union if he was traveling on union business. What do you mean by this?

Mr. CAMPBELL. I don't think we are questioning the fact that the Federal Government should not have paid his travel; it is that he is not filing the vouchers to validate the fact that it is a valid obligation of the Government.

The CHAIRMAN. I understand that the audit team talked with Mr. Crenshaw about his unpaid advances. What was his response?

Mr. CAMPBELL. He indicated to our audit team that he doesn't owe the money, and he implied that under the union agreement that the union has, he is not required to prepare travel vouchers. We have not had an opportunity to look into this, but there is a definite problem there.

The CHAIRMAN. Well, has Mr. Crenshaw gotten more travel advances since your discovery?

Mr. CAMPBELL. Yes, sir. After our interim report, he received some additional advances.

The CHAIRMAN. As I understand it, the GAO has reported that a significant number of failings in the Commission's accounting system stem from personnel problems. What are these problems and how significant are they?

Mr. CAMPBELL. OK. Some of the problems noted were inadequate training, particularly in the financial arena, vacant positions of responsibility not being filled, resulting in inadequate supervision. We found examples of accounting duties being performed by nonaccounting personnel. We found a lack of cooperation and communication between various levels of management and a series of instances of unprofessional conduct on the part of staff.

The CHAIRMAN. Do you call these items that you have listed unprofessional conduct?

Mr. CAMPBELL. Some of those, yes, sir. Not all of them.

The CHAIRMAN. Could you submit all other instances that you know of of unprofessional conduct, or are they in your statement?

Mr. CAMPBELL. There are a lot of disruptive practices on the part of personnel; in some cases, threats of violence by an employee against a supervisor; in other cases, the GSA guards were required to come into the work area to maintain order, those types of things.

The **Chairman**. Are these unprofessional practices a common occurrence in the Federal Government?

Mr. **Campbell**. I certainly hope not, Mr. Chairman. We like to think we have a very professional group.

The **Chairman**. I also understand that that EEOC engaged in a "loan program" during 1978 and 1979 in which then Chair Norton gave grants of more than $1.2 million to five civil rights groups. According to your records, Women for Change of Dallas, Tex., was given $200,000; the National Bar Association was given a total of $345,000; the Women's Law Center, Inc., which is no longer in existence, was given $144,000; the Lawyers Committee for Civil Rights under law received $200,000; and the Chicago Lawyers Committee for Civil Rights under Law, Inc., was given $345,000. What in the world was the purpose of these loan programs?

Mr. **Campbell**. The objective, Mr. Chairman, was to determine whether or not, through the use of private attorneys, EEOC would be able to provide legal assistance to a greater number of people than it would otherwise have been able to do.

The program was also seen from one respect as a means to eliminate somewhat the backlog cases.

The **Chairman**. Well, it looks to me like these amounts were front money to help fund those organizations. Would you conclude that?

Mr. **Campbell**. The funds were made available to nonprofit organizations as grants, who in turn gave them to private attorneys, and the private attorney either had to pay or not repay, based on whether he won or lost his case. So you might say it was seed money I think was the intent, yes, sir.

The **Chairman**. Why should the Federal Government be involved in fostering private organizations, foundations or otherwise, that have their own special interests at heart?

Mr. **Campbell**. The program was questionable in nature as to whether or not they had the authority to enter into the program.

The **Chairman**. This is the kind of stuff that really bothers me because I think the agency, if it is doing its job, will find ways of providing new opportunities for women and minorities without necessarily fostering political organizations in the process. Do you agree or disagree?

Mr. **Campbell**. Yes, sir.

The **Chairman**. You agree. (Laughter.)

You still haven't answered my question.

Mr. **Campbell**. I am sorry. I may have misunderstood the question, sir. Would you repeat?

The **Chairman**. Well, do you think the Federal Government ought to be in the process of fostering political organizations, or should they be doing the job as a bureaucracy or as an agency itself?

Mr. **Campbell**. No, the Federal Government should not be fostering political organization.

The **Chairman**. Well, that is what they are doing here. Now, whether you agree or disagree with these agencies, such loans could be turned around the other way, I suppose, if you have different people in control of the EEOC. Is this a reasonable practice, in your opinion, for the Federal Government to be engaging in.

Mr. CAMPBELL. No, sir. Our legal people have held that it was a questionable practice, and there was some question as to whether authority existed to undertake the program.

The CHAIRMAN. Well, how much of this $1.2 million that went to five civil rights groups was earmarked for the cost of administration of those groups?

Mr. CAMPBELL. As I recall, about $334,000 of the total went for administrative expenses.

The CHAIRMAN. Where did the rest of it go?

Mr. CAMPBELL. For the loans and grants to the private attorneys.

The CHAIRMAN. As I understand, your report indicates that a lawyer would turn to one of the groups administering this money and ask for money to cover the expenses of bringing suit. He or she could receive up to $1,500 for an individual case and $7,500 for a class action. You know, under the common law, we used to call that champerty and maintenance.

Apparently, if an attorney lost the case, the money received was called a grant. Is that right?

Mr. CAMPBELL. Yes.

The CHAIRMAN. If the attorney won, he or she would return the money. Is that right?

Mr. CAMPBELL. That is correct.

The CHAIRMAN. Both of those statements are correct. To the attorney, the money was a loan if he won, a grant if he lost. Is that right?

Mr. CAMPBELL. Yes, sir.

The CHAIRMAN. It seems like a form of no-fault litigation insurance. When did this loan fund program end?

Mr. CAMPBELL. It was first funded at the end of 1978 from 1978 funds, and it went through fiscal years 1980 and 1981. It ended in fiscal year 1981. No, I am sorry, at the end of fiscal year 1980. I am corrected; at the end of fiscal year 1980, Mr. Chairman.

The CHAIRMAN. Well, I am really concerned about this program because I don't think the Federal Government ought to be supporting any political organization on any side of these issues. We ought to be doing the job. If the agency has a good purpose to begin with—and it does—it ought to be doing the job itself. If it needs more attorneys, we ought to be hiring more attorneys. But I don't think we should be fostering private groups out there at Government expense to sue the Government, among other people.

Mr. CAMPBELL. Yes, sir.

The CHAIRMAN. Do you agree?

Mr. CAMPBELL. Yes, sir. We agree.

The CHAIRMAN. Are you familiar with the memorandum dated October 28, 1981, from Johnny L. Johnson, Jr., Assistant General Counsel to Izzie L. Jenkins, Executive Director, entitled "Status Report on Loan Fund"?

Without objection, I wish to insert this memorandum in the record. Are you familiar with that?

Mr. CAMPBELL. Yes, sir, I have seen the memo.

The CHAIRMAN. According to that memorandum, the grants have been consolidated into four regional loan programs: Atlanta, Baltimore, Chicago, and Dallas. A total of $847,934 has been obligated for 212 cases. Is that correct?

Mr. **Campbell.** That is correct.

The **Chairman.** I would like to insert that memorandum at this point.

[The memorandum referred to follows:]

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20506

OFFICE OF THE
GENERAL COUNSEL

October 28, 1981

MEMORANDUM

TO : Issie L. Jenkins
Executive Director (Act'g)

Constance L. Dupre'
General Counsel (Act'g)

THRU : James N. Finney
Associate General Counsel
Trial Division

FROM : Johnnie L. Johnson, Jr.
Assistant General Counsel (Act'g)
Support Programs Branch

SUBJECT : Status Report on Loan Fund

The Loan Fund Program expired on September 30, 1980. Pursuant to the Loan Fund Close Out Procedures, the Office of Audit conducted audits on each of the four programs and transferred the files to this office for collection purposes.

We have been able to determine that there was a total of $847,934.69 obligated for the Atlanta, Baltimore, Chicago and Dallas Loan Funds on a total of 212 cases. There is a total of $804,907.74 in outstanding loans.

The following is a summary of the activities taken pursuant to the Loan Fund Close Out Procedures on each Loan Fund.

ATLANTA LOAN FUND

The Atlanta Loan Fund loaned a total of $141,037.69 on 36 cases. There has not been a repayment on any of the cases and we have not been requested to make a decision as to the cancellation or extinguishment of any loan. Therefore, the outstanding balance remains $141,037.69.

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The Lawyers' Committee for Civil Rights Under Law did not transfer the files for the 36 funded cases to the Office of Audit, at the time of the audit. However, they did provide the auditors with a list of the loan recipients, as well as the name of the case, the date the loan was granted, the amount of the loan, and the signed loan agreements for all but 4 of the cases. The loan recipient for the four cases, is Joseph Henderson of Tallahassee, Florida. The amount loaned to Mr. Henderson is $17,500.

Loan confirmation letters were transmitted to all loan recipients on October 27, 1981. The attorneys were requested to respond by November 23, 1981, and for each subsequent six month period with information regarding status of the litigation and further anticipated action. We also transmitted the promissory notes and other pertinent documents to the Budget and Finance Division and requested that accounts receivables be established and placed into the computer.

BALTIMORE LOAN FUND

The Baltimore Loan Fund loaned a total of $244,272.73 on 52 cases. The case files were transferred on November 5, 1980, by the National Bar Association to the Office of Audit, which verified the loaned amounts and in turn sent the files to the Support Programs Branch. Loan confirmation letters were sent to all attorneys who received loans on April 21, 24 and 27, 1981, requesting that loan recipients provide this office, within six months and for each subsequent six month period, with information regarding the status of the litigation, including last action taken, date of action, date on which further action is anticipated and projected date on which litigation is expected to be concluded. The status reports were due October 21, 24 and 27, 1981. 1/ This office transmitted the promissory notes and other pertinent documents to the Budget and Finance Division and requested that accounts receivables be established and placed into the computer. Budget and Finance Division has computerized the FY '79 data which reflect that $144,272.73 were committed for loans.

1/ We have received eight responses to our letters from loan recipients. Loan recipients on three cases have indicated that a total of $8,521.40 had been repaid to the EEOC and on another five cases a total of $6,501.97 had been repaid to the NBA. We sent a memorandum to the Budget and Finance Division requesting that it verify whether these repayments were made to the Commission. If the Budget and Finance Division verifies that payment has been made, this will reduce the outstanding amount to $229,259.36. However, if the Budget and Finance Division is unable to verify that payments were made, we will request verification from the National Bar Association.

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The FY '78 data for the remaining $100,000 committed for loans has not been placed into the computer.

CHICAGO LOAN FUND

The Chicago Loan Fund loaned a total of $214,500 on thirty-seven (37) cases. There is a total of $213,500.00 in outstanding loans. Letters requesting a status report on the cases were sent to all attorneys on April 20, 1981 and May 20, 1981. Status Reports are due in this office within six months of those dates, which are October 20, 1981 and November 20, 1981.

We transmitted the promissory notes and other information on the cases to the Budget and Finance Division and requested that accounts receivables be established on each individual loan recipient and placed in to the computer. We have not received a response from the Budget and Finance Division.

To date, we have received a status report on the following four cases:

a. Mazariego v. Maywood Board of Fire and Police Commissioners - Case settled - each side paying its own fees. 2/

b. August v. Delta Airlines - This case was decided by the U.S. Supreme Court on March 9, 1981. The issue in this case involved the discretion of the U.S. District Court in Title VII actions to allow costs under Rule 68 of the Federal Rules of Civil Procedure to an employer that prevails on the merits, after having made a good faith settlement offer. The loan amount on this case was $1,000.

   The attorney, in the brief filed with the Supreme Court, requested that costs be awarded to the plaintiff. The Supreme Court, however, held that each side should pay its own costs. Therefore, pursuant to the provisions of the loan fund contract, we have recommended that this loan be extinguished.

2/ The amount loaned on the case was $1,500. We received a letter from the loan recipient which stated that payment was made to the Budget and Finance Division. We have requested Budget and Finance Division to verify that repayment was made. If payment has been made, the outstanding balance will be $212,000.00.

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c. Fautecks v. Montgomery Ward - The attorney has informed us that this case is currently pending in United States District Court for the Northern District of Illinois. He stated that $816.75 of his $7,500 loan has been paid out in costs and thereis a balance of $6,693.25 to be used on the case. We have placed this information in our files.

d. King v. Motor Freight - We recieved a letter from the attorney on July 21, 1981, informing us that the case was settled on September 6, 1980. He stated that the funds for this case were transferred to another case entitled Smith v. General Motors. The amount loaned on this case was $7,500. No further information as to the amount of funds used has been supplied. We have placed this information in our files.

DALLAS LOAN FUND

The Dallas Loan Fund Loaned a total of $249 816.32 on 87 cases. There is a total of $206,096.62 in outstanding loans. There have been 16 loans repaid in the amount of $37,951 and 4 loans cancelled in the amount of $4,768 and $1,000 returned unused. We will send confirmation letters to each loan recipient and recommend to the Budget and Finance Division that accounts receivables be established on each loan on October 30, 1981.

The case files were transferred to the Office of Audit by the Women for Change Inc., which verified the loaned amounts and in turn sent the files to the Support Programs Branch. This office, because of technical problems relating to the promissory notes and loan agreements, sorted out and reorganized each of the case files and have reconciled the amounts included on each.

CONCLUSION

A summary of the cases funded under each loan fund is available in the Branch for review.

JLJ/jcj

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The **Chairman**. The more I get into this—and, of course, I have to admit I am getting very irritated with it—but it sounds to me like you've got a "lawyers' relief fund" here.

Mr. **Campbell**. There is certainly not much incentive to the attorney to win or lose if he is going to get his money either way.

The **Chairman**. Right. It is not only that, but you are funding special-interest groups at Government expense to sue the Government and other people in society, rightly or wrongly, with all of the biases that these special-interest groups may or may not have.

Mr. **Campbell**. That is correct, sir.

The **Chairman** I am sure if groups that were dedicated to maintaining segregation had received Government funds, there would be a hue and a cry throughout this country that would tear these roofs down. Would you agree?

Mr. **Campbell**. I agree, sir, 100 percent.

The **Chairman** I think the Government ought to play it right down the middle in order to do what is right, and the Government authorities ought to handle these problems, not outside private special-interest groups at Government expense, who are under no risk. This is a special lawyers' relief fund that literally is fomenting litigation not only against the Government but against other people, rightly or wrongly. I don't know, but it just doesn't seem right to me. Does it to you?

Mr. **Campbell**. No, sir, it does not. That has been the position taken by our office, too.

The **Chairman** Well, taking the Atlanta region, for example, which was run by the Lawyers Committee for Civil Rights under the Law, the committee gave out $141,000 of its $150,000 loan fund and spent all of the remaining $50,000 on administrative expenses as expected when the grants were given. Where is the $141,000 today?

Mr. **Campbell**. To be quite frank, Mr. Chairman, we don't have the slightest idea.

The **Chairman** Where is the $9,000 that was not lent?

Mr. **Campbell**. We don't know where that money is, either.

The **Chairman** There is no record about it?

Mr. **Campbell**. The accounting records are not capable of providing a track for that money.

The **Chairman** I see.

My staff contacted Women for Change and asked about the status of their loan fund. Its director said all money that was not spent had been returned or was tied up in court cases. The EEOC's memorandum indicated that only $37,951 of the $206,000 in outstanding loans has been returned.

Now, is the remaining money tied up in court cases, and if so, who is maintaining records of that money?

Mr. **Campbell**. The same answer. There are no records in the accounting system. We are unable to determine where that money is.

The **Chairman** Well, I wonder where are the exposes of these activities.

It seems to me that they may be using these moneys adequately and rightly if the law provides that they can do this. But is it right for the Federal Government to put $206,000 of the taxpayers money out and then not account for it one way or the other?

Mr. Campbell. It is a very questionable program, Mr. Chairman.

The Chairman Well, assuming Women for Change is a good organization—and I have to assume that—and assuming that they are using the moneys properly—and let's assume that—it is still abominable that the Federal Government is not keeping records of this money or the utilization of it, assuming that you can get by the hurdle that these are private special groups, special-interest groups that are using taxpayer moneys for their private special-interest purposes. Is that right?

Mr. Campbell. That is correct. No matter how glorious the intent, that does not compensate for the poor accounting.

The Chairman Does the EEOC know where any of the money not spent on administrative costs is today, some $800,000?

Mr. Campbell. As I understand it at the end of our audit, they are attempting, through the Office of General Counsel, to develop an inventory and contact the attorneys who have the money and send out letters requesting repayment.

The Chairman I see. Has the EEOC's Office of Audit reviewed these loans?

Mr. Campbell. Yes, sir.

The Chairman What were its findings?

Mr. Campbell. Of the $300,000 administrative costs, they questioned about $100,000 of that.

The Chairman I see. You questioned a lot more than that.

Mr. Campbell. I am not sure we covered it, did we? The GAO, as part of our audit, did not look at the supporting documentation for the administrative costs held by the nonprofits.

The Chairman I understand that these reports were submitted to the commissioners. Do you know what action was taken by them?

Mr. Campbell. They are still unresolved as far as I know. They are open cases.

The Chairman. I think the loan fund was not a loan fund as might be implied in the literal reading of those words. These loans were loans only if you won your case. Is that right?

Mr. Campbell. That is correct.

The Chairman. Moreover, approximately $334,000 of the $1.2 million involved in this program went to administrative costs. Is that right?

Mr. Campbell. Correct.

The Chairman. One of the audits conducted by the EEOC questioned why Women for Change had not returned over $2,000 in furniture it had purchased under the program. Why was money being spent or loaned under this program being spent on furniture?

Mr. Campbell. I am assuming it was allowable cost under the administrative expenses incurred. Am I correct, Mr. Curry? Have you looked at the contract?

Mr. Curry. I believe that particular expense for the furniture was questioned by the auditors, the fact that they had not returned their furniture at the end of the contract.

The Chairman. It has not been returned.

Mr. Campbell. It has been about a year, and no action has been taken yet.

The **Chairman**. Other instances concerned those administering the program giving loans to themselves, and as always there are very few records available documenting expenditures. Is that right?

Mr. **Campbell**. That is correct.

The **Chairman**. The EEOC's own Office of Audit has challenged tens of thousands of dollars claimed to be spent on administrative costs, as I understand it. Is that correct?

Mr. **Campbell**. About $100,000 is correct.

The **Chairman**. What action has been taken by the EEOC to recover the money incorrectly paid out to those groups for unsubstantiated administrative costs?

Mr. **Campbell**. It is still an open, unresolved issue, and as far as we know, little or no action has been taken.

The **Chairman**. What was the legal justification given by the EEOC for creating such a program?

Mr. **Campbell**. The EEOC asked its general counsel for an opinion on the authority to undertake the program. The counsel recognized that they lacked specific statutory authority but concluded that they had implied authority to enter into grants of this type.

The **Chairman**. Who was the counsel? Do you know what his or her name was?

Mr. **Campbell**. By name? I do not—Jim, do you know the name of the counsel?

Mr. **Curry**. No.

Mr. **Campbell**. I can provide that for the record.

The **Chairman**. Will you provide that for us?

Mr. **Campbell**. Yes, we will.

The **Chairman**. Can you provide us a copy of that opinion?

Mr. **Campbell**. Yes, sir.

The **Chairman**. Staff tells me we have a copy.

Mr. **Campbell**. Do you have a copy of the opinion?

The **Chairman**. Yes, we do.

Mr. **Campbell**. OK, sir.

[The material referred to follows:]

[Memorandum]

Equal Employment Opportunity Commission,
Washington, D.C., July 18, 1978.

To: Chris Roggerson, Director, Office of Special Projects and Programs.
From: Constance L. Dupre, CLD, Associate General Counsel, Legal Counsel Division.
Subject: Invitation for Grant Application: Private Title VII Bar Fund.

This office has reviewed the draft "Invitation for Grant Application" for the administration of a loan fund which would provide costs, on a reimbursable basis, to private attorneys litigating Title VII cases. It is our understanding that the loan fund program will be initiated in fiscal year 1978 and funded from fiscal year 1978 appropriations.

We find the draft "Invitation" to be legally sufficient, subject to the following considerations: (1). Sufficient fiscal year 1978 funds are available for the funding of the program; (2). The proposal must clearly reflect that the program addresses a need arising in fiscal year 1978; and (3). The Commission must comply strictly with the uniform administrative provisions set forth in OMB Circular A-110 which requires the use of standardized application and reporting forms which, to our knowledge, are not currently utilized by the Commission and, therefore would have to be obtained or developed.

Further, we would recommend that the term "revolving" loan fund not be used since a revolving fund must be expressly authorized by statute. (See attached Explanation).

AUTHORITY TO EXPEND COMMISSION APPROPRIATIONS FOR THE FUNDING OF SUBJECT PROGRAM

The purposes to which a federal agency's appropriations may be put are governed by several statutes, among them 31 U.S.C. § 628 which states "Except as otherwise provided by law, sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no other," and 41 U.S.C. § 11 which provides: "No contract or purchase on behalf of the United States shall be made, unless the same is authorized by law or is under an appropriation adequate to its fulfillment."

Absent a statutory prohibition against a particular type of expenditure, or a more specific appropriation for such expenditure, the Comptroller General has stated that the test to be applied in determining what types of expenditures may be made under an appropriation is whether the expenditure is reasonably necessary or incident to the execution of the program or activity authorized by the appropriation, 29 Comp. Gen. 419 (1950).

As we understand it, the funds for the proposed activity would be taken from the Commission's fiscal year 1978 appropriation which is a general purpose appropriation with the exception of a specific amount allotted for expenditure in connection with State and local FEP agency programs. Additionally, we are unaware of any provision of law prohibiting Commission expenditure of funds for the stated purpose.

Thus, the remaining question would be whether the operation of a loan fund to cover costs of private Title VII attorneys litigating Title VII cases is reasonably related or incident to the accomplishment of the purposes of Title VII.

In previous memoranda discussing Commission programs of assistance to the private bar, this division determined that a program which would "improve the access of aggrieved individuals to the courts and the implementation of the statutory scheme of Title VII of the Civil Rights Act of 1964 * * *", and a program which would "initiate a targeted number and type of litigation vehicles via the private bar in order to provide direct litigation support to the Commission" were reasonably related to the accomplishment of the purposes of Title VII and, therefore, within the authorized use of the Commission's general appropriation.

We concluded specifically that "the Commission has the authority to contract with LCCRUL and MALDEF to increase the effectiveness and size of the private Title VII bar and to assure that every charging party who wishes to pursue Title VII rights in court may do so," see page 5 of March 29, 1974 memorandum from William Carey, General Counsel, to Chairman Powell.

Thus, the proposed activity being reasonably related to the mission of the agency, not specifically prohibited by statute, nor the subject of a more specific appropriation, we conclude that the Commission's general appropriation may be expended for the operation of the proposed loan fund.

"REVOLVING" LOAN FUND

The term "revolving" fund is used by OMB to describe a fund the purpose of which is to carry out a continuing cycle of operations, OMB Circular A-34, Part II, § 61.1. Such a fund is ordinarily used in connection with Government corporations or officers within the Government which generate income as well as expend money in order to allow the Government agency to make use of the income to finance the continuity of the operation in which it is engaged.

However, the use of revolving fund procedures requires specific statutory authority since, absent such authority, monies received from a Government program would have to be returned to the Treasury. See § 484 of Title 31 U.S.C. which provides that "the gross amount of moneys received for the use of the United States from any source whatever shall be covered into the Treasury," and 44 Comp. Gen. 87, 88 (Aug. 14, 1964), interpreting this provision as requiring specific authority for the use of revolving fund procedures where federal expenditures are involved.

Since the Commission has no express statutory authority to operate a revolving fund, and since the program as described would not operate to create such a fund within the Commission, we would recommend that the term "revolving" loan fund not be used.

OBLIGATION OF FISCAL YEAR 1978 APPROPRIATION

It has been consistently held that an agency may not obligate funds appropriated for one fiscal year to be expended for the needs of another fiscal year, see 36 Comp. Gen. 683, 684; 33 id. 90, 92, and that the fiscal year appropriations may be obligated only for the procurement of supplies and services needed during that fiscal year, 21 Comp. Gen. 1159, 1160; 32 id. 565. However, these statutory limitations do not necessarily mean that articles and services procured with annual funds must be delivered or performed or even used in that fiscal year, so long as the need for the article or services arose during the fiscal year sought to be charged, 20 Comp. Gen. 436 (1941).

Therefore, to the extent that the Commission contemplates funding the proposed activity with fiscal 1978 appropriations, it must be clear that a bona fide need for the activities arose in fiscal 1978.

While these decisions relate specifically to the obligation of funds under a contract arrangement, it appears that grants are subject to the same restrictions, 20 Comp. Gen. 370 (1941); Comp. Gen. B-189712 (Jan. 5, 1978).

Since the loan fund program described would involve a repetitive service, i.e., the reviewing and approval of loan applications as they are submitted, the nexus between the granting of a loan and a need arising in fiscal 1978 must be clearly established in order to charge such loans against the fiscal year 1978 appropriation.

This could be accomplished by providing that loans will be made only for cases in which the notice of Right-to-Sue was issued, or the case accepted for handling by the requesting attorney, during fiscal 1978. However, under this approach, the priority established by the Commission, i.e., that new cases be given first consideration, might be compromised since these cases may not begin to emerge from the rapid charge processing system in any substantial numbers before the end of fiscal 1978.

An alternative approach would be to implement the program as a research and demonstration project emphasizing the experimental and unique nature of the program and focusing on the development of an end product, i.e., data needed by the Commission to assess the feasibility of such a program as a means of accomplishing its overall litigation strategy, providing effective assistance to the private Title VII bar and increasing the availability of legal representation to Title VII charging parties. Language reflecting this change in emphasis could be incorporated into the "Program Purpose" section of the Invitation for Grant Application.

APPROPRIATE FUNDING VEHICLE

Guidelines recently promulgated by the Office of Management and Budget pursuant to the Federal Grant and Cooperative Agreement Act of 1977 (Public Law 95-224), make the type of funding arrangement utilized to support a particular activity dependent upon the relationship created between the federal agency and the recipient of the funds.

These guidelines require that a procurement contract be used when the principal purpose of the relationship is acquisition of property or services for the direct benefit of or use by the Federal Government, that a grant arrangement be utilized where the principal purpose of the relationship is the transfer of anything of value to accomplish a public purpose or stimulation authorized by federal statute and no substantial involvement between the federal agency and the recipient is anticipated during the performance of the activity, and that a cooperative agreement be used where the principal purpose of the relationship is the accomplishment of a public purpose and substantial involvement occurs between the federal agency and the recipient.

The intent of the guidelines is that the instrument utilized reflect the true relationship intended.

As we understand it, the motivation for developing a program such as the one proposed was generated in part by the Commission's revision of its "cause" determination standard so as to make cause determinations synonymous with litigation-worthiness, and the agency's commitment to ensuring that as many cause determinations as possible be litigated. To the extent that the proposed activity and the information developed during its performance is intended to assist the Commission in living up to this commitment, it will be of direct benefit to the Commission. However, the program as described would also further the public purpose of eliminating employment discrimination which Congress sought to accomplish in enacting Title VII.

Thus, a determination could reasonably be made that the relationship between the Commission and the loan fund administrator is intended to serve equally the purpose of obtaining a service which will directly benefit the Commission and of accomplishing the public purposes of Title VII. Therefore, the use of either a grant or a contract would be justified.

COMMISSION AUTHORITY TO ENTER INTO CONTRACT OR GRANT ARRANGEMENT

The Commission's authority to contract is based upon § 705(g)(1) of Title VII which provides that the Commission "shall have the power—(1) to cooperate with and, with their consent, utilize the regional, State, local and other agencies, both public and private, and individuals," which, read in conjunction with the proscription of 31 U.S.C. § 665(b) against Government acceptance of voluntary service, would permit the Commission to expend funds in exchange for services provided.

Section 7(a) of the Federal Grant and Cooperative Agreement Act of 1977 provides that, notwithstanding any other provision of law, each executive agency authorized by law to enter into contracts, grants, cooperative agreements, or similar arrangements is authorized and directed to use contracts, grant agreements or cooperative agreements as required by this Act. The purpose of this authorization, S. Rept. 95-449, p. 12, is to overcome the problem many agencies now face if their choice of instrument is statutorily restricted to a particular instrument. If an agency is presently authorized only to enter into either contracts, grants, cooperative agreements or other arrangements, this authorization enables that agency to enter into any or all three types of agreements unless its use of a particular type of agreement is specifically proscribed by a provision of law.

Title VII does not prohibit the use by the Commission of any particular type of agreement and neither does the language of § 705(g)(1) restrict the Commission to the use of any one instrument. Even if such a restriction were present in the statute, it would be superseded by § 7(a) of the Federal Grant and Cooperative Agreement Act of 1977.

In conclusion, we are of the opinion that the "Invitation for Grant Application" is legally sufficient and may be implemented by the Commission subject to the considerations previously mentioned.

The CHAIRMAN. Does the GAO agree that the interpretation given by the attorney involving title VII was correct? I have to tell you, I don't agree with it.

Mr. CAMPBELL. No, sir, we do not agree, either. We do agree that they lack explicit authority to undertake such a program.

The CHAIRMAN. Yes, I agree with that.

Mr. CAMPBELL. We agree that they had implied authority to issue grants, but we felt that this grant was beyond that intended by the Civil Rights Act and was for a purpose not envisioned, and therefore it was inappropriate to make grants of this nature.

The CHAIRMAN. Thank you.

I notice that my colleague and dear friend, Senator Nickles, is here. Senator, I have been very alarmed over what has been going on at the EEOC. They just seem to be running this agency in an extrajudicial fashion.

I would appreciate it if you would continue on with the hearing if you can, as long as you can. I will have to go to the floor because of managing the bill, but I appreciate, Mr. Campbell, your being here today, and I appreciate your work that you have been doing to try to help us resolve some of the difficulties facing this agency. What we want is an efficiently functioning EEOC that will create jobs, not one that is going to create paperwork and burdens that seem to debilitate jobs. What we have found is exactly that in many respects, although there are many good employees and people who really want to do what is right over there.

And so the purpose of these hearings is to try to get this agency doing that for which it was set up to do rather than what I have called extrajudicial things. I think we ought to call these activities what they really are—illegal activities.

So with that, I will turn over the rest of the time to Senator Nickles.

Senator NICKLES. Thank you, Mr. Chairman.

Let me ask you some brief questions.

The final issue that Senator Hatch would like to address concerns your statement that millions of dollars in unsupported adjustments were made to the yearend reports submitted by EEOC to external sources such as Treasury and Office of Management and Budget. Why did these adjustments occur?

Mr. CAMPBELL. The adjustments occurred at the end of both fiscal years 1980 and 1981.

Senator NICKLES. Why were they made?

Mr. CAMPBELL. They were made because EEOC recognized there were a large number of accounting transactions that had been rejected by the automated system and that the data reported in the system was inaccurate, and they attempted through two means, one, to force enter some transactions by bypassing the edited internal controls, and they used a worksheet to attempt to come up with some amended balances which were more indicative of what they thought the end-of-the-year figures should be.

Senator NICKLES. Who made those?

Mr. CAMPBELL. The individual person involved?

Senator NICKLES. Yes.

Mr. CAMPBELL. What was the name?

Mr. CURRY. Arlene Fields.

Mr. CAMPBELL. Arlene Fields.

Senator NICKLES. Arlene Fields?

Does the Chairman of the EEOC sign off on, or at least review, those reports?

Mr. CAMPBELL. He does not sign off, and whether or not he reviewed them, we are unable to tell from the record.

Senator NICKLES. Is that the same person that is responsible for the yearend reports?

Mr. CAMPBELL. This person was not. The certifying officer?

Mr. CURRY. The certifying officer was Leffert Fauntleroy.

Senator NICKLES. It was who? Could you pull the microphone up, Mr. Curry?

Mr. CAMPBELL. Leffert Fauntleroy.

Senator NICKLES. Does the Chairman of EEOC sign off or review those reports?

Mr. CAMPBELL. He does not sign off, and we are not able to determine, Senator, whether he reviewed them or not.

Senator NICKLES. Your report states that EEOC officials certified the agency's fiscal 1980 and 1981 yearend reports to the Treasury as being accurate, even though this certification was made with knowledge of inaccuracies. If true, such action would violate a criminal statute, title 18 United States Code section 1018. Could you please explain the facts behind these allegations?

Mr. CAMPBELL. At the time the certifications were made, the agency knew that there were a large number of transactions that had not yet been entered into the system. The agency knew that the accounting balances had been adjusted manually. The agency was aware of a history of accounting problems. The certifying officer, at least in 1 year, was notified that the balances were inaccurate; and yet the certification was made.

Senator NICKLES. When did this occur?

Mr. CAMPBELL. This happened both in 1980 and 1981, sir.

Senator NICKLES. What was the name of that official?

Mr. CAMPBELL. Mr. Fauntleroy again.

Senator NICKLES. Was a report sent to the chairman's office? Was the chairman informed of that inaccuracy?

Mr. CAMPBELL. We are unable to tell whether or not the chairman was notified, sir.

Senator NICKLES. Has the EEOC taken any steps to improve the financial disarray based upon your recommendations in the interim report?

Mr. CAMPBELL. Yes, they have done a number of things. They have filled some of the vacant positions which we were complaining about. They have dismissed Mr. Fauntleroy, the certifying officer. They are providing some training. The backlog of rejected transactions has been considerably reduced. The rejected transactions are now being inputted monthly before the monthly reports are prepared, and there have been a number of actions taken to address the problem.

Senator NICKLES. Were charges filed against Mr. Fauntleroy, to your knowledge?

Mr. CAMPBELL. I think it is being investigated. I am not sure. Do you know, Mr. Curry?

Mr. CURRY. The Office of Counsel is investigating it at EEOC right now.

Senator NICKLES. So it is still pending investigation?

Mr. CURRY. It was pending at the time that we left, yes.

Senator NICKLES. Gentlemen, we appreciate your cooperation before this committee and also for your in-depth review and report. As chairman of the subcommittee, and also for Senator Hatch, chairman of the full committee, I wish to say thank you for your efforts, and we hope to have the legislative follow-through to make sure that some of the changes you recommended will be made. Thank you very much.

Mr. CAMPBELL. Thank you, sir.

[The prepared statement of Mr. Campbell follows:]

PREPARED STATEMENT OF WILBUR D. CAMPBELL, ACTING DIRECTOR, ACCOUNTING AND FINANCIAL MANAGEMENT DIVISION, GENERAL ACCOUNTING OFFICE

Mr. Chairman and members of the committee, we are here today at your request to discuss our recent report, "Continuing Financial Management Problems at the Equal Employment Opportunity Commission." The report is the outcome of a review we made at the request of this Committee after it received allegations that the Commission was beset with financial problems similar to those it had experienced in fiscal 1974. Our April 1976 report on those problems stated that the Commission's accounting records were in chaotic condition and that this had contributed to over $900,000 more being obligated in fiscal 1974 than was appropriated by the Congress. Such overobligation is specifically prohibited by the Anti-Deficiency Act (31 U.S.C. 665). Our current review did not disclose any evidence of the Act being recently violated, but it did disclose that the Commission has continued to experience serious financial problems during the past 3 fiscal years.

When we began our audit work in August 1981, we noted many of the same recordkeeping problems that were discussed in our April 1976 report. For example, transactions were still not being promptly and correctly recorded and some types of records were again piled on desks awaiting processing. Records were not being properly reconciled or researched to identify system deficiencies that allow record errors to develop. We also noted that accounting records could not be used for management or reporting purposes without extensive adjustments to make them more accurate. In short, we found an agency operating an automated accounting system that was producing unreliable data.

We first looked at the design features of the system, which the Commission purchased in 1978, and found no major deficiencies. We attributed the unreliable data it was providing to the fact that personnel were not operating the system as designed. For example, we found that transactions rejected by computer edits were not researched, corrected, and recorded as intended. A backlog of about 4,000 transactions, with an estimated value of $9.4 million, developed before positive action was taken to deal with that record problem.

Our recent report provides details on the conditions contributing to the poor accounting records and describes other serious financial problems as well. Briefly stated, we noted that:

Receivables, or amounts owed the Commission, were not properly recorded, controlled, or collected. For example, the $2.6 million in receivables recorded at the end of fiscal 1981 was not correct because it included some apparently uncollectible amounts and omitted other amounts that possibly could be collected.

About $1.1 million of the recorded amount was related to travel advances that were made primarily to Commission employees. Before our audit, very little action was taken to collect or settle amounts that had been outstanding for extended periods.

Internal controls were particularly weak in the financial management area. For example, duties were not properly separated to reduce opportunities for fraudulent, wasteful, or abusive practices; accounting personnel were not adequately supervised or trained; and the internal audit staff was not large enough to perform needed financial management audits.

Controls over the Commission's bill-paying activities were also weak. Payments were sometimes delayed for extended periods because of such things as missing documentation and shortages of typists. Some vendors had complained about delayed payment.

Our review also identified a number of questionable acts by Commission officials in the past 3 years, which either violated Federal statutes or unnecessarily complicated fund control efforts. These are summarized as follows.

In the last few days of fiscal 1978, and again in 1979, agreements were entered into whereby money was either loaned or advanced to private attorneys handling allegations of unlawful employment practices. About $1.2 million was disbursed under the related program, for which the Commission has no express authority.

Funds provided for one fiscal year were obligated to cover goods and services that were clearly to satisfy the needs of future years. For example, over $111,000 in fiscal 1979 funds was obligated on the last day of that year to cover periodicals to be published and delivered in future years.

Unliquidated obligations valued at about $30 million were not validated as required by law. In one case, a $1.2 million transaction was recorded even though it was apparently known to be invalid.

Yearend reports were certified for fiscal 1980 and 1981 as accurate when it should have been obvious to agency personnel that the figures were incorrect.

We reported on the Commission's recent financial problems in an interim report issued to this Committee in October 1981. Although the interim report did not contain recommendations to correct specific deficiencies, the Acting Chairman of the Commission commented on it in a December 1981 letter to his Committee. His letter lists a number of specific actions that would deal with the deficiencies we found. Since that letter, we have noted or have been advised of other actions, either taken or proposed, to address some of the problems. Our final report recognizes the Commission's planned or completed actions.

In our final report, we do make a number of specific recommendations to correct the financial problems at the Commission. The recommendations are directed toward specific action needed to improve the Commission's financial operations. In some cases, the actions can be accomplished in a relatively short period; others will require more time. If our recommendations are implemented and the Commission's other proposed actions are completed, we believe these longstanding financial problems will be resolved.

This concludes my statement, Mr. Chairman. We will be pleased to now answer any questions you may have.

Senator NICKLES. Our next guest is Clarence Thomas, who is Chairman of the Equal Employment Opportunity Commission.

Welcome. We are glad to have you before us, particularly with the short amount of time that you have had as Chairman. We are most appreciative of the time and effort that you have been able to put in in a short period of time.

It is my understanding that you have a statement you wish to make.

Mr. THOMAS. That is right, Senator.

STATEMENT OF CLARENCE THOMAS, CHAIRMAN, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, ACCOMPANIED BY CARLTON R. STEWART, SPECIAL ASSISTANT TO THE CHAIRMAN; JOHN SEAL, DIRECTOR, ORGANIZATIONAL STUDY GROUP; AND ODESSA SHANNON, DIRECTOR, OFFICE OF PROGRAM PLANNING AND EVALUATION

Mr. THOMAS. First, before getting to my statement, I would like to introduce the individuals at the table with me. To my far left is Carlton Stewart, one of my special assistants. To my immediate left is John Seal, who is heading the reorganization task force, and to my right is Odessa Shannon, who is the Director of the Office of Program Planning and Evaluation.

Also, prior to reading my prepared statement, I would like to indicate that many of the changes or problems which have been set out in the GAO report were addressed by the previous acting Chair of the organization, Cathie Shattuck, and the Acting Executive Director at that time, Edgar Morgan.

Senator NICKLES. Who, sir?

Mr. THOMAS. Edgar Morgan. These individuals have addressed many of the concerns raised in the GAO report, or at least in the interim report.

Senator NICKLES. Mr. Thomas, could I ask you to pull the microphone around?

Mr. THOMAS. I would also like to indicate that although there have been many valid criticisms of the EEOC, I would like to state that there is much that is positive and good about the organization. The task which the organization is required to carry out is both awesome and necessary.

Since arriving at EEOC, I have found that there are many sound programs and dedicated employees who are willing to put forth the effort required to get the agency back on its feet.

With that, Mr. Chairman, I would like to move on to my prepared statement.

I was sworn in as Chairman of the Commission just about 1 month ago. I knew that the EEOC faced some serious management problems before I accepted the position. I read the interim GAO report issued in October setting out the serious deficiencies with EEOC's accounting system and poor financial management. I had also heard of other management problems within the Commission such as low morale and a lack of direction.

What I found upon assuming the job as Chairman, however, was worse than I had been led to believe. Internal control problems exist not only with the accounting system but also with other vital management systems such as payroll and personnel.

There is a lack of automated information systems to provide managers with timely and reliable information. The management objectives system is highly burdensome on managers and of questionable value as an information tool for top management in the EEOC.

As is probably true of other agencies, there appears to be a problem of overgrading of some staff positions. Also, collection of outstanding debts owed to the Government has been a low priority.

Perhaps worst of all, there has been an overriding lack of strong management accountability throughout the Commission. In terms of management objectives, the whole focus has been on meeting quantitative goals: reducing the number of "backlog"ged charges, processing a prescribed number of actions within a certain time period, et cetera.

I support the use of quantitative goals, but there has been little emphasis on the quality of work produced, the managerial capability of supervisors or the responsiveness of staff to policy direction.

Numbers can always be fudged to look good. Strong management accountability can never be established in an agency until it has been made clear that managers are in fact expected to manage.

Complicating this problem is the fact that when the EEOC was reorganized in 1979, functions such as policy research, internal management analysis, and employee training were splintered throughout the agency, and management accountability for these critical activities disappeared. Furthermore, due to a RIF in 1981 and continuing hiring freezes within the agency, serious staffing deficiencies have developed which disrupt organizational performance.

In addition, there is a well-known "backlog" of EEO charges which was of special concern to the Congress during the previous administration. EEOC instituted the rapid charge process through the field offices to reduce the "backlog" of charges. While the numbers came down and cases were more rapidly handled, some negative aspects of the process are now apparent.

First, because field managers are rated on the number of cases resolved, there is a great deal of pressure to settle charges to meet performance quotas. This pressure does raise the question of equity being rendered on behalf of the complainants.

Second, EEOC has no substantial quality assurance effort supporting the rapid charge process to assure that settlements are made in accordance with Commission policy. Furthermore, I was led to believe that the "backlog" of charges was down from 69,000 in January 1979 to approximately 14,000 at the end of March 1982.

I discovered, however, that the term "backlog" as used by the agency referred only to those charges initiated prior to February 1979. Since then, of course, additional charges have been received. As the inventory of those charges grew, EEOC began to refer to these additional charges as "frontlog" rather than counting them as increases in backlog.

I consider this a meaningless distinction. Charges that are a year old represent backlog just as much as the ones that are 3 years old. So while I was originally told the case backlog was 14,000 charges, I have discovered the true charge inventory figure we should be discussing, adding both backlog and frontlog, is about 45,000 charges.

Under the present system, while productivity is maintained and the size of the inventory controlled, many of the older charges are getting older. My staff has recently informed me that a significant portion of the inventory is over a year old. However, I will soon develop and implement special projects with specific tasks and deadlines for prioritizing the processing of older charges.

Confronted with this wide range of management problems and constrained by the fact that I have assumed this position with 16 months of this administration's first term already gone, I knew strong action was needed as quickly as possible.

Specifically with regard to the GAO's findings on EEOC's financial management system, the following actions have been taken:

Obligations through March 1982 have been completely reconciled, and we will reconcile by the end of this month the records for April and May. I sent a memo last week to all office directors emphasizing the importance of their attention to this reconciliation project.

All rejected transactions outstanding on the error file have been corrected and processed. Any new errors are now being corrected on a current basis prior to generating monthly reports.

Critical staff vacancies in the Finance Office have been filled, and we have sought temporary accounting staff assistance from other Federal agencies to help us in the reconciliation effort.

Previous supervisory staff in the area of Finance have been replaced with new managers. We are in the process of hiring a person for the new senior executive level position of Director of Audit.

A debt collection program has been established for outstanding travel advances, and we have collected $250,000 of the estimated $1.1 million owed the Government. We are also in the process of reviewing debts owed by contractors and other receivables with an eye toward developing an accelerated debt collection strategy to be implemented within the next few months.

A review has been initiated of all unliquidated obligations from prior years to determine their validity. The review will be completed by September 30.

Proper separation of financial duties has been made within the accounting staff to improve internal control, and further reorganization of the Finance Office is under review.

In addition to these steps, some of which were initiated before I arrived, I have asked the staff to provide me with concrete suggestions for making systemic improvements to the finance operations once we have gotten the accounting records corrected and up to date.

Since I found that there were many more management problems than just those in the finance area, I have also taken the following actions within the past month:

One, to improve management accountability, I have directed the staff to review the current management objectives tracking system, and I have completely overhauled the performance agreements for all of EEOC's managers to include qualitative performance standards, not just numerical goals, upon which they will be evaluated in October.

Two, I temporarily assumed the position of Executive Director so that I could have more one-on-one contact with office directors and quickly get on top of important issues.

Three, I ordered a review of our 1982 budget situation to better understand our resource constraints and options within those constraints.

Four, instructions were given to review other EEOC internal management systems such as payroll, personnel, property inventory control, and contracts and procurement.

Five, a reorganization study has been initiated with the mandate to improve the organizational structure and provide the Commission with the capability for better policy analysis, stronger internal management, and an effective quality assurance program.

I know that this committee is interested in the goals I plan to set for the Commission over the next 2 years. I am still in the process of developing benchmarks and goals, but let me identify for you some of the management and program objectives I am now considering. The objectives under consideration for the coming year include:

Streamlining the EEOC organizational structure; implementing an accelerated debt collection program; improving the internal management support functions such as finance; updating internal EEOC management and program policy directives; improving the internal policy development process so that the EEOC Commissioners can better address important policy issues; addressing in a realistic manner how the Commission can reduce its nagging backlog of outstanding EEO charges from both the private and public sectors; reviewing the usefulness of EEOC surveys required of employers and labor unions and the paperwork burden they place on the private sector; streamlining the Federal agency EEO grievance process; reviewing the EEOC field office intake procedures used for incoming complaints and making any necessary improvements to those procedures.

It is more difficult to project goals for the following year since so much will depend on our course of action on the projects during this coming year. There are a couple of priorities, however, that I can now identify:

First, improve EEOC's internal automated management information systems so that we can deal with reliable, current information when making program and management policy decisions.

Second, develop the capability to assist smaller employers to understand and support EEO laws and offer them technical assistance in meeting EEO standards.

Finally, I would hope to have firmly established the reputation of the Equal Employment Opportunity Commission as an organization that works from the top down. Agency heads come and go, but ultimately a healthy EEOC with institutionalized, well-run processes and systems is the best insurance for the public that the Federal Government is protecting the employment rights of individuals.

Laws have been passed to correct employment inequities, and it is up to agencies like EEOC to administer those laws in a professional manner. The mission of the EEOC is to insure equal employment opportunity without regard to race, color, religion, sex, national origin, or age and, in the Federal sector, without regard to handicap.

The management initiatives I have implemented and those I plan to implement are all designed to strengthen the EEOC to enable it to carry out this mission. I view the role of the Equal Employment Opportunity Commission in the 1980's as a civil rights law enforcement agency, not as an advocacy tool for either business or civil rights interest groups. Policies from the Commission must be based on sound, objective analysis and judgment supported by the best facts available and rendered in a timely fashion.

In closing, let me state that I intend to lead a working commission that will review in a systematic way its EEO policies, continually reevaluating the effectiveness and relevancy of policies to current employment problems.

Mr. Chairman, I would be pleased to answer any questions the committee may have.

[The following material was supplied for the record:]

BACKUP DATA FOR TIME LAPSE STUDY: CHARGES PENDING MAY 31, 1982

	Months					Total
	Under 3	3 to 6	6 to 9	9 to 12	Over 12	
Atlanta	450	376	335	230	1,365	2,756
Baltimore	511	497	382	333	2,685	4,408
Birmingham	713	322	178	121	1,250	2,584
Charlotte	494	380	238	219	1,196	2,527
Chicago	543	242	146	119	650	1,700
Cleveland	437	296	212	194	1,307	2,446
Dallas	496	255	112	98	654	1,615
Denver	203	120	63	46	359	791
Detroit	463	114	26	81	735	1,419
Houston	629	357	227	198	1,265	2,676
Indianapolis	336	151	129	89	251	956
Los Angeles	540	497	438	321	2,799	4,595
Memphis	503	340	258	178	796	2,075
Miami	324	289	309	278	1,629	2,829
Milwaukee	201	129	46	39	866	1,281
New Orleans	576	434	391	237	1,528	3,166
New York	563	605	273	168	2,486	4,095
Philadelphia	511	332	253	186	1,543	2,825
Phoenix	339	158	65	62	686	1,310
St. Louis	599	288	188	146	1,017	2,238
San Francisco	372	167	136	90	1,406	2,171
Seattle	169	88	48	118	591	1,014
Total	9,972	6,437	4,453	3,551	27,064	[1] 51,477
Percent	19	13	9	7	52	

[1] The data presented here was used to calculate the time lapse percentages (19 percent, under 3 months; 13 percent, 3 to 6 months; 9 percent, 6 to 9 months; 7 percent, 9 to 12 months; and 52 percent, over 12 months). The percentages confirm our expectations about the progressive aging of charges in our workload (all charges pending as active as of May 31; that is, new and backlog).

It should be noted that computer run used to produce the time lapse data showed that, as of May 31, 51,477 charges were pending in the Commission's workload. That is 6,638 charges higher than the 44,839 pending figure indicated in our 2nd Quarter report covering the period through March 31, only 2 months earlier. In order to determine the validity of this sudden jump is inventory, the Office of Program Planning and Evaluation conducted a diagnostic evaluation of field office data entry practices for the period ending May 31. We found almost 3,000 charges for which no source code had been entered into the computer. Source codes define whether the Commission or a State and Local agency has first received the charge and who will process the charge. Under current worksharing agreements with State and Local agencies, charges originally received by the Commission may be forwarded to the State for processing. When source codes for such charges are timely entered, computer runs would delete them from pending end of period inventory reports. Thus, in terms of 6,638 charges increase, it can be said that many of these charges were not in fact part of the Commission's workload, although because of data entry lag they appear to be.

Moreover, our diagnostic study provides a strong indication that closure codes which would have further reduced the pending inventory figure also were not timely entered. It was found to be the practice in some field offices to wait until the end of the reporting period to catch up and enter codes for all actions during the quarter. As a result, since the computer run cutoff for the time lapse study was May 31 (one month ahead of schedule), fewer source and closure codes had been entered than would have been by the expected cutoff date of June 30.

In addition to these reporting anomalies, is the fact that all charges received (either directly into our workload—or simply "on hold" for transfer to State and Local agencies) are captured by the computer. Therefore, during April and May the computer picked up approximately 7,600 new charges as "received" (at the intake rate of 3,800 per month) into the Commission's workload. Unfortunately, because some offices lag behind in entering the source and processing codes that would clarify the actual status of these charges when the time lapse study run cutoff on May 31, 6,000 charges were still shown in the inventory creating an inflated inventory figure.

Senator NICKLES. Thank you very much, Mr. Thomas.

I am impressed with your understanding of the problems of the agency and also your interest in seeing the EEOC as a civil rights enforcement agency rather than an advocate for any particular group. Congress specifically established the EEOC as the main Federal agency to remedy discrimination.

I am sure you will find this committee supportive of your efforts to make the EEOC operate in a fair, expedient, and professional manner.

I am also pleased to see you describe the, quote, backlog-frontlog as it really is, a backlog of unresolved cases. The April 9, 1981, GAO report is critical of EEOC's rapid charge process which emphasizes settlements, which raises questions about the credibility of the agency, both from respondents and complainants. GAO found that EEOC's 50-percent settlement rate with benefits included cases where EEOC had no jurisdiction or where there was no reasonable cause to believe that there was any discrimination.

The report said:

> Typically, these charges involved individuals who were fired for alleged job infractions such as excessive absenteeism, poor job performance or work habits in violation of company policy.

These grievances are not violations of title VII, and as a consequence settlements do not provide for substantial relief yet allow individuals to abuse the system. By filing charges of discrimination, they can get settlements under title VII not related to discrimination such as "clean work record and neutral references."

I see where you have set the review of backlog as an objective. Would you also review the rapid charge system and report back to this committee?

Mr. THOMAS. Review of the rapid charge system is also one of our goals, and of course we intend to report back to this committee.

Senator NICKLES. What do you think would be a reasonable time frame?

Mr. THOMAS. Right now, I think it would be somewhat imprudent for me to set a timeframe because there is so much that we are reviewing. The rapid charge process is being looked at in the context of the overall review of the organization.

However, within the next few months I will have pretty much of a handle on some of the major problems: whether or not, for example, in the rapid charge process, we would want to have a built-in quality assurance unit or whether we would have a separate quality assurance unit.

These are decisions that are further down in our review of the organizational structure, and we simply have not gotten down to them yet. So it would be somewhat imprudent right now to give myself an arbitrary timeframe. I will say, however, that we will review it as quickly as possible and that we are utilizing a task force that is working full time on the reorganization.

Senator NICKLES. You mentioned 45,000 cases. Are those cases pending, or are those cases over a year old?

Mr. THOMAS. Those cases are pending.

Senator NICKLES. Those cases are pending. What percentage of those would be over a year old?

Mr. THOMAS. Fifty-two percent.

Senator NICKLES. There are about 20-some-odd thousand that are over a year old, and those would range anywhere from a year to how many years?

Mr. THOMAS. I think perhaps 4, 5, 6 years.

Senator NICKLES. Do you happen to have an average of time span of those over a year; how long their time might be? Has anyone compiled that?

Mr. THOMAS. We can provide that to the committee.

Senator NICKLES. I am interested. I personally have seen or have been involved in some past cases that would drag out for 2 or 3 years and greatly increase the, one, legal expenses for all parties and, in many cases, not really go to the real crux of the question. It seemed to be of great benefit for persons who were advocating one side or another but not so much for the individual complainant nor for the company that was involved.

I think it is important to reduce that timeframe, but not just do it as your predecessor had and change the classification or definition of backlog. I think that was less than honest.

The same GAO report points out that the EEOC's systemitic program, in many instances, duplicated that of OFCCP's Executive Order 11246 program. Our committee report, and those of others over the years, have consistently raised this problem. There is no need for duplicating our resources or to place employers in a double bind.

Could I ask you to study this problem and see if we couldn't come up to a solution so that we will not duplicate the efforts?

Mr. THOMAS. That again, Senator, is a part of the total reorganization study. We are looking at the systemic program as well as other parts of the organization, and we would be more than happy to report to the committee. There is very little in the organizational structure that is escaping our scrutiny at this time.

Senator NICKLES. Good. Have you found that OFCCP and the EEOC have duplicated your efforts?

Mr. THOMAS. Well, there has been duplication. I think that occurs when you have overlapping of authority in various areas and when various individuals are subject to similar laws. However, you can build in criteria for looking at certain cases which would preclude that kind of duplication. In addition to that, you can coordinate responsibilities with the other agencies.

Senator NICKLES. We would be most appreciative if you would coordinate also with this committee so that we can do everything to insure that that does not happen. It has been somewhat of a repetitive problem which many have said, Yes, we want to eliminate that, but we haven't been successful to date.

Your looking into it is appreciated by myself and Senator Hatch, and we would like to coordinate our efforts with you in that regard to see if we can eliminate some of the unnecessary duplication.

Do you have any idea when you might be able to get back to us as far as some possible guidelines for either or both?

Mr. THOMAS. With respect to systemics, we have not begun to unearth the particulars of those problems, but again, I will say that we will get back as quickly as possible, and we do work with members of the staff of the committee on a continuing basis.

Senator NICKLES. Have you visited with Ellen Shong, the head of OFCCP?

Mr. THOMAS. I have not, but I have visited with her boss, Mr. Collyer.

Senator NICKLES. Great. I would appreciate your coordination with them and both of you together getting back to our committee. I think that would be a good step in the right direction.

The GAO report further found that EEOC had not been timely in initiating litigation once conciliation has failed. In some offices, the average length is 7 months before starting litigation. It seems to me that you would want deadlines; otherwise, you would have no management control points to which to hold staff accountable. In addition, it would assure all parties involved resolution of a matter at a given point.

Do you agree?

Mr. THOMAS. I do agree that litigation and enforcement efforts should be initiated in a timely fashion, and we have already taken steps to build in responsiveness to our directions into the accountability system, both the SES agreements and the merit pay systems.

Senator NICKLES. You state there is a possibility of overgrading at EEOC, and I share that concern with you. It is my understanding that the Office of Personnel Management has completed a study of the Commission's Office of Administration. I also understand that OPM has completed similar reviews of EEOC offices in the field such as Seattle and Atlanta.

Could you provide the committee with copies of these reports as soon as possible so that we can also be informed?

Mr. THOMAS. We would be more than happy to do that, Senator.

Senator NICKLES. The past administration of EEOC reorganized the field offices quite extensively. It is my understanding that some of the field offices have such a small caseload and intake that it is hard to justify their even being kept open. Some, I understand, handle only backlog cases.

From charts prepared by the EEOC, one could seriously ask why EEOC maintains two offices in the San Francisco Bay area, one in Oakland and the other in San Francisco. It seems to me that such caseload is all in Oakland, and since real estate is so high in San Francisco, does it not make sense to close the San Francisco office?

Mr. THOMAS. Senator, with respect to the district offices and the area offices, we are looking at the entire field office structure to determine whether or not it is more feasible to go back to a regional office structure or some reduced version of the field office structure that we currently have. Of course, if there is overlap of responsibilities in the San Francisco-Oakland area, we will take steps to reduce that overlap or eliminate it.

Senator NICKLES. Could you get back to this committee within 6 months?

Mr. THOMAS. Definitely.

Senator NICKLES. The April 21, 1981, GAO report states legal overstaffing nationally, a finding that I find alarming. It points out that attorneys are averaging only three cases when the criterion set by EEOC is 10 cases. With that level of production from your attorneys, it is no wonder the EEOC has a backlog.

It is even more alarming when we find that EEOC started a loan program with civil rights groups to hire private attorneys to try discrimination cases. I think it is irresponsible for administrators to allow such waste of resources. What is your opinion of that?

Mr. THOMAS. With respect to the productivity level of attorneys, we are looking at that. However, I might add that cases are not fungible and they are not interchangeable. An individual hired to do age discrimination cases may have a much, much more difficult caseload than an individual hired to do a sex discrimination case or a race discrimination case.

In addition to that, however, the productivity rate is somewhat disheartening and discouraging.

With respect to the loan program, we are looking into that. I have just recently become aware of it. I will say that I personally would not have made the loans, but again that is not offered as an indictment of the loans having been made in the past, although I do have problems with it, personally.

We are looking into it, first of all, to collect the money that is owed the Federal Government and to determine once and for all whether or not we did have authority to initiate the loan program to begin with.

Senator NICKLES. When did the loan program first come into being?

Mr. THOMAS. It is my understanding that that loan program came into being in 1978, and if I might give you some information on that——

Senator NICKLES. Please do.

Mr. THOMAS. As to what we have done and what has been done, the total number of loans was 201 loans. The total amount of loans under the loan program was $819,064.28. The total amount of loans that have been repaid by loan recipients as of June 10, 1982, is $86,021.03.

The total number of loans which have been repaid as of June 10 is 36. The total number of cases lost by loan fund recipients as of June 10, 1982, is 21. The total amount of money which is unrecoverable as a result of cases lost, again under the conditions of the loan program, is $39,588.16. The total number of outstanding cases funded by the loan fund program as of June 10, 1982, is 144.

The total amount of outstanding loans owed to the Commission as of June 10, 1982, is $693,453 under this program.

Senator NICKLES. Thank you very much for the information, Mr. Thomas. I am appreciative of that. I am also very appreciative of your statement that you are not in support of this, quote, loan program.

Mr. THOMAS. I am not.

Senator NICKLES. I would very much concur with that. Could you give me a better example? What would be a typical case where they were able to get a loan if they wanted to? Could you explain that further?

Mr. THOMAS. Senator, I am not that familiar with that loan program. I am only familiar with the general outlines of the conditions of the program. I am not familiar with the types of cases that they have handled in the past. Over the next week or so, however, I will become more familiar with it.

Senator NICKLES. All right.

If you would report back to the committee, in particular as far as—is it your belief that these loans are illegal?

Mr. THOMAS. That possibility does exist. However, at this point we have not gotten a final decision from our general counsel. We will look at it to determine the legality of it, to determine also whether or not we concur with the opinion of GAO and, of course, nonconcur with the prior opinion of the general counsel's office.

Senator NICKLES. I would appreciate a copy of that opinion for the committee and also what possibilities would exist of terminating. I know some of these cases, as we have found, can stretch over some period of time. You mentioned some of these began in 1978. Had some loans been issued in 1981?

Mr. THOMAS. I do not think so. To my knowledge, no loans have been issued in 1981. The most recent loans were in fiscal year 1980.

Senator NICKLES. During our OFCCP hearings, we heard how women were being excluded from construction jobs, one of the reasons being that unions who have agreements with contractors do not refer to women for these jobs. The March 15, 1979, GAO report on minorities in construction craft unions points out that minorities have had little success in getting new jobs.

The report found that the EEOC, which has responsibility for assuring nondiscrimination in unions, had done little to monitor union activity to assure nondiscrimination. The report specifically states EEOC's enforcement approach has been "ineffective and has done little to improve minority representation in these unions." It points out that the EEOC has not kept accurate records in monitoring unions and union reports. The EEO-3 forms are frequently not filed or are inaccurate.

Since unions are a key point for entering construction jobs and the EEOC is the agency responsible for monitoring their activities, I think it is important that EEOC make a priority to establish an accurate monitoring system to review unions' compliance with the responsibilities under title VII.

Now, there may be a good system on the line at EEOC, since we have not inquired about it, but if there is not one on line, will you agree to set one up which will monitor and enforce legal requirements under title VII for unions?

Mr. THOMAS. Senator, I agree that we should ferret out discrimination wherever it is, including labor unions. I will note, however, that I have been informed by my staff that we are somewhat between a rock and a hard place with respect to monitoring discrimination in the unions because recently our EEO-2, and EEO-2E form surveys have been denied by OMB.

However, we will continue to work out the problem, to monitor the discrimination or problems in employment of minorities and women in labor unions and also work out the problems with respect to these various survey forms.

Senator NICKLES. As you know, testimony has been submitted to this committee concerning numerous financial problems at EEOC. Two of the issues addressed earlier are the EEOC's loan fund and the alterations made, apparently by Mr. Lefford Fauntleroy, to the yearend financial reports in fiscal years 1980 and 1981.

I realize it would be unfair to expect you to be conversant in all these issues, given the fact that you have only been on the Commission for 1 month. Therefore, will you submit to this committee within 1 month a report on the status of the loan fund, how much money is owed to the Commission, the steps that you will take to recover the money?

Mr. THOMAS. I will be more than happy to do that, Senator.

Senator NICKLES. Will you also submit a report on what steps were taken by your office in regard to the allegations made against Mr. Fauntleroy concerning the yearend alterations and why?

Mr. THOMAS. We will do that.

Senator NICKLES. Is it correct that an investigation is currently pending?

Mr. THOMAS. In that case, we have an opinion with respect to the yearend certifications from our director of audit, from the audit office. We have an opinion also from the Office of General Counsel, both recommending that the Department of Justice be contacted.

Senator NICKLES. Is your intention or your belief that the information will be turned over to Justice for prosecution?

Mr. THOMAS. I intend to review those two opinions, and at this point it is my intention to act consistent with the recommendations.

Senator NICKLES. And you will report back to the committee as fast as possible?

Mr. THOMAS. Yes; I will.

Senator NICKLES. And Mr. Fauntleroy has been terminated?

Mr. THOMAS. That is right, prior to my——

Senator NICKLES. Terminated as of when?

Mr. THOMAS. Prior to my arriving at the Commission but sometime during the spring, I believe.

Ms. SHANNON. March.

Mr. THOMAS. In March.

Senator NICKLES. One of the concerns I have had about the EEOC is the tendency for the chairman to make too many independent decisions without involving the other commissioners. At your confirmation hearing, we expressed concern, and you agreed, that there is a need to keep your colleagues informed so they could make informed decisions about administrative matters, organizational matters, managerial matters, as well as the decisions they would make about the substantive policies of the organization.

Can you tell me what specific steps you have taken so far to carry out that commitment and how you plan to involve them in the future?

Mr. THOMAS. With respect to the administrative functions of the organization, that function is, by statute, lodged in the Chair. With respect to overall Commission policies and budgets, those sorts of things, we do intend to take steps to involve all members of the Commission.

As a part of the reorganization effort, we are looking at ways to, for example, give the lead role on various areas, policy areas, to individual commissioners, to have them choose areas of interest and to work on those areas and to lead designated staff in developing policy in those areas. These are things that we are beginning to look at.

In addition to that, we are implementing a paper flow system which, interestingly enough, does not now exist in the organization. We are implementing a paper flow system to see to it that the members of the Commission as well as the rest of the management team are properly informed about all management decisions consistent with, of course, their level of responsibility and their interest.

Senator NICKLES. Mr. Thomas, just a couple of brief questions. How many employees do you have?

Mr. THOMAS. We have just under 3,200.

Senator NICKLES. You have how many?

Mr. THOMAS. Just under 3,200.

Senator NICKLES. 3,200 employees in the Commission.

Mr. THOMAS. Right.

Senator NICKLES. Spread out throughout the United States. How many are in the Washington area?

Mr. THOMAS. Approximately 700.

Senator NICKLES. What is your total annual budget?

Mr. THOMAS. $145 million, approximately.

Senator NICKLES. Are we looking at the same figure for next year?

Mr. THOMAS. That is right.

Senator NICKLES. The same thing, $145 million.

Well, let me compliment you on your statement before this committee today, particularly in view of the fact that you have been chairman for a little over 1 month?

Mr. THOMAS. That is right, just under 1 month.

Senator NICKLES. I think you inherited a very large job, at least that is what I would term it, and it has been mismanaged for some time. I think Cathy Shattuck did an outstanding job in the interim and continues to do so on the Commission, and I think you and the other commissioners are to be complimented for a very substantial turnaround that you are making in the Commission.

I realize the problem and the mismanagement that you have taken on and the fact that you have been able to come before the committee and say there have been some substantial errors made in the past; We are trying to resolve those financially; we are trying to change those bogus numbers that previously were given to make the Commission look better than their productivity was really showing. I think this speaks well for you and also for the balance of the Commission and for the employees of the Commission.

I think you have certainly taken some good steps in the right direction. Looking at the mountains of work that still is yet to be done, I will wish you well in that regard and state to you that you have the cooperation of our subcommittee and also the full committee and of Congress to help you make some of those changes. We should rid this country as well as we possibly can of discrimination where it does exist and try to open up some avenues of opportunity for all people regardless of race, sex, color, or creed. We should eliminate some of the more probable misuse of Government funds that we have seen through the loans, et cetera.

Please stay in contact with us concerning your progress, we will also continue to work with you as we have in the past.

We thank you very much for your appearance before the committee today.

Mr. THOMAS. Thank you.

Senator NICKLES. We have a note that Senator Eagleton would like to submit a couple of questions for the record, and it is quite possible that other Senators will also. We would appreciate your response to those questions as well.

[The information referred to along with questions and responses follow:]

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20506

December 14, 1981

OFFICE OF THE CHAIR

The Honorable Orrin G. Hatch
Chairman
Committee on Labor and Human Resources
United States Senate
Washington, D.C. 20510

Dear Senator Hatch:

Thank you for your letter of November 25, 1981 forwarding to me a copy of the interim General Accounting Office (GAO) Report on the financial status of the Equal Employment Opportunity Commission, dated October 30, 1981. I have reviewed it carefully and my staff has reviewed it. As you know, very soon after becoming Acting Chairman, I became aware that there were some problems in our financial operations, and began early to identify the extent of those problems, and to initiate steps for corrective action. I welcomed the GAO investigators, and viewed them as an arm of government to assist us in identifying and resolving whatever problems existed in our control and administration of government funds. Staff at EEOC gave the GAO investigators their full cooperation.

I have directed staff to immediately begin to address all of the deficiencies identified in the interim report. Be assured that I share your commitment to sound financial management systems and procedures and to internal controls that insure that government funds are administered in accordance with established requirements. Unfortunately, the deficiencies identified by GAO are ones dating back for several years, as the report indicates, and will take time to correct. However, I am monitoring closely and now taking corrective action necessary to get EEOC back on a sound financial management track.

While I recognize that the October 30, 1981, GAO Report is an interim one and that no response is required at this time, I want to share with you as Chairman of our Oversight Committee what has taken place to address the deficiencies. The following preliminary steps have either been taken or will be taken within the timeframe indicated:

1. A new Acting Director has been appointed to head the Office of Program Planning and Evaluation, the office in which the budget and finance functions are placed. The Director is taking an active role in initiating improvement programs, including better organization of files and records to facilitate verifications and checks of financial records.

2. The selection procedure is in process for a Budget Officer and an Accounting Officer. These are vital positions which have been vacant since July and April, respectively. Selections should be made and personnel on board by January 30, 1982, or sooner.

3. Two training programs were held in October in which sessions were included on financial management and procurement. Reinforcement training on financial management and procurement for Office Directors will take place at the January 14-15, 1982, meeting of District Directors. As new staff come on board, priority training in financial management will be given to those having responsibility for such functions. The new accounting and budget officers will be responsible for extensive on-the-job training of present staff in the finance and accounting branches to upgrade skills where necessary.

4. The high error rate in coding financial transactions has been considerably reduced over the past several months due to a recent training program provided for our coders initiated by the new Director, and to assigning the coding of all disbursement to different staff. This is a systemic change and expedites input, reduces the error rate, and eliminates duplicate filing and recall of documents. Progress is being made in entering all of our transactions into the Central Accounting System. Extensive effort is being made to research and correct rejected financial transactions which were reported by GAO as recorded in our error file. We have reduced the 4,130 rejected transactions in the error file as of July 16, 1981 to 1,676 errors as of this date. I expect these 1,676 transactions in the error file to be resolved no later than January 30, 1982.

5. A clean-up cycle will be mandatory before any monthly, or other periodic financial report is produced to increase the accuracy of our financial reports.

6. In order to avoid the adjustment problem made in the closing of our fiscal 1980 financial records, we have delayed such closing of 1981 records until resolution of outstanding error transactions. In a further effort to increase the accuracy of our FY 1981 financial records, Office Directors were required to submit final reconciliations on any remaining FY '81 obligating documents to our Office of Program Planning and Evaluation by October 9, 1981, and to certify that as of September 30, 1981, the reconciliations were complete and that all obligating documents had been forwarded.

7. Errors reported in reconciliation reports will be promptly addressed by OPPE. We will no longer allow the build-up of an error transaction file. The finance and accounting staff has been instructed that it is responsible for prompt verification of errors reported in the reconciliation process by Office Directors, and that timely resolution of the errors and updating of the Central Accounting System to reflect reconciliation reports must take place. Failure by financial management staff to timely verify and update the system will result in disciplinary action.

   We have already initiated a feed-back program to Office Directors so that they are promptly notified when there is a problem to be resolved in their respective office's financial reports or records. This should avoid lingering, unresolved problems, speed up payments, and prevent further deficiencies.

8. The new accounting officer will be expected to begin an active program for validating unliquidated obligations. Such a program should be in full operation by March, 1982.

9. A program to improve the physical facility for filing and storing our financial documents is underway. We are investigating the possibility of putting our financial documents on microfilm to facilitate the retrieval, checking and filing of such documents.

10. Staff has been instructed that the accuracy of all data on vouchers must be pre-audited before payment. A formal pre-audit directive is in draft form, and will be reviewed and processed for clearance for issuance by the Commission no later than March, 1982.

11. The problems associated with taking advantage of discounts is a systemic one involving fund availability, procurement and payments. This problem will be addressed and corrected eliminating the loss of budget authority caused by the untimely payments.

12. A special effort has been initiated and will be intensified to collect outstanding travel advances from current staff and personnel not on EEOC staff. New instructions to staff and Office Directors will go out to speed up the collection activity. Instructions on clearance for resigning or otherwise terminating employees in the travel advance area will be re-emphasized.

13. Actions will be taken within 30 days to assure the separation of duties required to assure appropriate internal controls.

14. With the hiring of a Budget Officer and Accounting Officer, I will require much closer supervision of the systemic financial management process. We will also begin extensive on-the-job training of personnel responsible for and supporting this function.

15. Two additional auditors will be added to the audit staff to assist with the audit function, and I have instructed our internal audit office to develop, with OPPE, a plan for periodic audits of our financial controls.

Our financial management staff and Office Directors clearly understand that we cannot allow these deficiencies to persist any longer, and they understand my commitment to resolving these problems. This agency will continue to cooperate with the GAO investigators as they complete their investigation and finalize their report. Should you have any questions about the corrective actions being taken, I will be happy to provide you with further information.

Sincerely,

J. Clay Smith, Jr.

J. Clay Smith, Jr.
Acting Chairman

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20506

OFFICE OF THE CHAIR

May 10, 1982

Honorable Orrin G. Hatch
Chairman
Committee on Labor and Human Resources
United States Senate
Washington, D. C. 20510

Dear Chairman Hatch:

Thank you for your letter of April 29, in which you asked several questions about the Commission's operations, including what problems I found when I became Acting Chairman regarding the agency's financial management. I am pleased to respond and enclosed are my comments on the issues you raised.

Sincerely,

Cathie Shattuck

Cathie A. Shattuck
Acting Chairman

Enclosure

1. As you know, the General Accounting Office is conducting a review of EEOC's financial operations. Would you respond to the following observation made as a result of this review:

   What is the financial condition of EEOC at this time? Are the financial records current and do you know how much money you have for the remainder of FY '82?

   The GAO audit requested by your committee pinpoints the problems we are addressing: prompt postings, reconciliations of monthly obligations on a month-by-month basis, and the use of our Internal Audit Office to immediately audit reconciled monthly reports as each month's records are closed. Postings of obligations had not begun for the present fiscal year until February, and therefore, an accelerated schedule of this activity was required in order to assure that we have adequate funds for the remainder of FY 1982, thereby avoiding any possible anti-deficiency violations. Accounting reports are now running on a current basis, and the Internal Audit Office, which for the past few years was restrained from examining the monthly obligations reporting system, is now doing so on a continuing, timely basis.

   Funds now available for obligation in FY 1982 are $139,889,000. Also, a pay supplemental has been approved by OMB in the amount of $4,850,000. The supplemental is contingent on Congressional approval and, if enacted, will provide a total of $144,739,000 for FY 1982. Projected obligations through September 30, 1982 are $143,253,053, leaving unprogrammed funds projected at $1,485,947. Total funds obligated through March 31, 1982 are $73,343,565.

2. Please provide us with the names of those who were in the following offices for the time covered under the GAO study:

    (a) The Executive Director: Preston David 6/6/77 - 6/12/81
    Issie Jenkins (Acting) 6/15/81 - 3/3/82

    (b) The Director of Program Planning and Evaluation: Brooke Trent

    (c) The Budget Officer: Lefford Fauntleroy

What is the present status of the Office of Internal Audit? How many positions are included on the staff? What studies are currently in process?

The status of the Office of Internal Audit is being upgraded — from one that merely audits to one that both audits and conducts investigations. The new Office of Audit and Special Investigations will be headed by an SES-level director. That job, which has been filled by a GS-15 in an acting capacity for the past two years, is being advertised now, and we expect to select a permanent director this summer. The present staffing level is eight (six professionals and two clericals), and five more positions have been authorized.

The Office is currently auditing seven close-out reports of a local fair employment practices agency, one commercial contract, one pre-award contract, and is continuing to monitor the activities of the Commission's budget and finance office.

3. Another GAO review is underway in the Commission's Office of Review and Appeals. Please advise this Committee on the generally existant conditions of this office when you assumed your position and what changes, if any, have been made since that date. What is the current workload of this office? In responding to this question, please address the issue of the Performance Standards for the attorneys in this office which call for only two decision a week per attorney.

The Office of Review and Appeals (ORA) handles all EEO appeals from other Federal agencies, a function that was transferred from the Civil Service Commission pursuant to Reorganization Plan No. 1, 1978. The current workload of ORA is some 3000 appeals.

When I became the Acting Chairman on March 4, 1982, I found the conditions at the Office of Review and Appeals (ORA) to be chaotic, in terms of both the physical processing of cases and the management of the attorneys who review case files and draft appeals decisions. For example, there was a backlog of hundreds of appeals which had been decided some weeks or months before but never duplicated, assembled and/or mailed. This back-up lapped over into other processing areas, such as the intake and central records units, caused by a shortage support staff. Since none of the functions were performing adequately, backlogs developed throughout the system and current data on appeals was virtually non-existent. Further, due to a paucity of information on what cases had been decided, it happened on several occasions that two decisions were issued on the same case.

A computer terminal was finally installed in ORA to track cases but was inadequate because it was programmed to identify cases by docket number only, not by the appellant's name. In computer searches for a case, if the docket number was not known, the computer was of little help. This programmatic error led to assignment of more than one docket number to a single appeal in several instances, confusion as to the office's actual workload, and the assignment of the same case to two different attorneys.

Due to lack of basic storage equipment, such as filing cabinets, case files were frequently lost or misplaced, and thus the processing times were delayed and in some cases had to be reconstructed, which entailed soliciting duplicate documents from both the appellant and the charged agency.

The other major problem I found in ORA was that attorneys and their work were not being properly supervised. Time and attendance problems were rampant; performance standards were so low (two cases per week per attorney) that some attorneys could easily complete in a week the amount of work expected of them in a month; attorneys were allowed to work on just the easy cases, letting the more difficult ones accumulate into a substantial backlog; and, draft decisions were not being reviewed adequately for internal consistency as compared to other EEOC decisions, for consistency with prevailing case law, or, more remarkably, for duplication. As indicated previously, duplicate, and sometimes different, decisions were unknowingly issued on the same case.

All of these problems I found have been or are being corrected now. On April 5, a proven agency manager was detailed to ORA for 120 days as acting director of that office. In the brief time he has been there, the following actions have been taken: The Acting Executive Director approved, on a temporary basis, six additional clerical positions for ORA. This task force has assembled, duplicated and mailed out nearly one-half of the backlog of several hundred appeals decisions and is systematically organizing the paperwork associated with newer appeals, which heretofore had been allowed to simply accumulate in an unorganized fashion. New appeals are being processed by the intake unit on a current basis. That unit has also been organized so that duplicate, premature or otherwise inappropriate appeals do not enter the system. An adequate number of filing cabinets have been provided to store case files and two pieces of work-processing equipment will be delivered in the very near future to ORA, which should considerably reduce the time it takes to get drafts and final decisions typed.

Time and attendance problems in the office have been virtually eliminated. The current performance standard for attorneys is three cases per week, although the productivity has increased from two cases per week to nearly four. Attorneys are now required to work on both easy and difficult cases on a routine basis and to systematically eliminate older, backlogged appeals already assigned. A weekly reporting system within ORA covering productivity and case-management within each unit reporting to the head of the office is in place, and the Acting Director is assiduously reviewing each proposed appeals decision to assure consistency, and, of course, to eliminate any possibility of duplicate decisions on the same case.

In sum, the primary problems I found in the Office of Review and Appeals, when I became Acting Chairman on March 4 are well on the way to being resolved.

4. Recently another Performance Standard, this one for EEOC field compliance personnel requiring an average cash benefit per settlement of $3,000, has been drawn to our attention. How is this standard being implemented? Furthermore, why is this standard necessary?

In the late 1970's, to address the problem of low employee productivity, the Commission developed a rapid-charge-processing system which placed primary emphasis on the early resolution of charges. To measure the productivity of each field office performance indicators were established to measure not only the number of charges resolved, but also the average dollar-benefit-per-settlement. Goals in each category were set for each office based on actual experience. The unfortunate side-effect, however, despite instructions from headquarters to the contrary, was that some Commission employees, in their zeal to settle cases resulting in monetary benefits, pushed to resolve even obviously non-meritorious cases, which some respondents and charging parties perceived to be coercion on EEOC's part. I recognized the inherent difficulties in this standard, and effective April 1, 1982, eliminated it as a performance indicator for field managers.

5. EEOC district offices have investigative staffs divided by type of charge, i.e., Title VII, Equal Pay and Age Discrimination Units. In several instances, employers have experienced a Title VII investigation on behalf of charging party, been advised that no cause was found to substantiate that charge and within a few weeks, once again greeted by an EEOC investigation on behalf of the same charging party but the second investigation centered around an age or equal pay issue. Why must employers go through this type of treatment that appears to border on harassment?

When the Commission initially received administrative responsibilities for the Age Discrimination in Employment Act (ADEA) and the Equal Pay Act (EPA), the procedural rules and regulations from the Department of Labor were adopted for an interim period, during which the Commission moved to develop its own procedural rules. We are aware of instances during this time in which investigations were not effectively coordinated. In response to this problem, the Commission issued special guidance to its field staff to assure coordination of these investigations.

With the development of a new compliance manual for processing age and equal pay cases, investigations are now coordinated through procedures as well through as management supervision. If duplicate investigations reoccur, they are the result of a breakdown in one or both of these processes and will be corrected when identified. It is possible in a limited number of circumstances that the Commission might initiate a directed investigation after the completion of a limited-scope investigation in which evidence indicated the high probability of ADEA or EPA violations. In such cases it is necessary for the investigator to return to the respondent establishment in order to complete the investigation.

Analysis is now underway on the advisability and practicality of integrating the Commission's Title VII, ADEA and EPA field staffs. If this plan is adopted, and I believe it will be, perhaps as early as the beginning of FY 1983, then, of course, cross-training of investigative personnel in each statute will take place. One of the primary results of such integration should be the virtual elimination of poorly coordinated investigations.

6. Under the 1978 Civil Service Reform Act, EEOC is pursuing a federal government-wide affirmative action policy. What is the status of this program and what requirements are expected to be met and within what time frames by the various departments and agencies?

Since the President's Reorganization Plan No. 1 of 1978, EEOC has been issuing instructions to Federal agencies for the implementation of their affirmative action programs through a series of management directives. This was previously done by the Civil Service Commission, now the Office of Personnel Management. Both Federal agencies and EEOC went through a two-year transition period, which ended on September 30, 1981.

The Commission's management directive #710, issued on October 6, 1981, prescribed procedures, guidance and formats for Federal agency reporting on FY 1981 equal employment opportunity affirmative action accomplishments. The FY 1981 accomplishment report consists of those actions which reflect the progress and efforts of an agency to eliminate employment barriers for minorities and women and to attain transition period goals. Based on instructions from previous directives, agencies had targeted their six most populous occupations, based on an underrepresentation analysis for each, and established a one-year goal which was later extended to the end of the transition period, i.e., September 30, 1981. To measure accomplishments, agencies were asked to compare their workforce profile of October 1, 1980 by race/national origin group/sex with their EEO profile on September 30, 1981. Agencies were also asked to report on actions taken to eliminate barriers to goal-achievement and to provide additional explanatory comments as necessary. Accomplishment reports were due EEOC by December 1, 1981. By April 30, 1982, OGE had received 122 accomplishment reports. See Attachment 1 for the list of agencies that have and have not submitted the reports.

On January 23, 1981, EEOC issued management directive #707, which instructed Federal agencies to begin the preparation of their multi-year affirmative action plans for minorities and women for fiscal years 1982 to 1986. Agencies, major operating components, and field installations are required to develop plans establishing long-term (five-year) goals and annual goals for all those occupations where they find underrepresentation of a particular minority group or sex. Agencies are to conduct the underrepresentation analyses by comparing the actual percentage of representation of each race/national origin group by sex in each employment category with the percentage representation of each race/national origin group by sex in the appropriate civilian labor force. Agencies are permitted to use alternative availability statistics or a data base other than local SMSA civilian labor force data if their recruitment and hiring for a specific occupation is consistently done from a given geographical area.

EEOC is aware that it may not always be possible to attain all goals despite good-faith efforts due to recent hiring freezes and reductions-in-force, which will affect agencies' analyses and planning. Agencies are therefore encouraged to monitor their programs and adjust them as necessary. Also, EEOC will give credit to agencies for innovative program activities and for efforts that result in restructuring jobs, creating bridge positions and larger pools of qualified applicants and providing better training.

EEOC also enforces Section 501 of the Rehabilitation Act of 1973, as amended. The Commission develops and recommends policy concerning equal employment opportunity for handicapped individuals in the Federal government. Under this authority, on October 6, 1981, EEOC issued to Federal agencies management directive #709 prescribing instructions, procedures, guidance, and formats for FY 1981 six-month affirmative action accomplishment reports, FY 1982 twelve-month affirmative action program plans, and FY 1982 twelve-montn affirmative action accomplishment reports.

Under this program, affirmative action is to be an integral part of ongoing agency personnel management programs, as evidenced by persons with disabilities employed in a broad range of grade levels and occupational series, commensurate with their qualifications, and by agency policies that do not unnecessarily exclude or limit persons with disabilities because of job structure or design or because of architectural, transportation, communication, procedural, or attitudinal barriers.

Agencies with 100 or fewer employees are not required to establish numerical goals; agencies with 101 or more employees are to establish numerical goals for persons with specified severe disabilities. For the purpose of setting goals, the disabilities specified may be considered as a group. Agencies that expect little or no hiring activity are to concentrate their affirmative action efforts on merit promotion, upward mobility, and developmental assignments for handicapped employees.

Most Federal agencies complied with the requirements for submission of plans and reports by December 1, 1981. See Attachment 2 for list of agencies that have and have not submitted plans and reports under Section 501 as of April 30, 1982.

7. EEOC has historically had a problem with its ever-increasing backlog of charges. What is the present status of the backlog? Also, in recent years, do Title VII charges still represent the majority of charges coming to the Commission or has this shifted to Equal Pay or Age charges? If a backlog still exists, what steps can be taken to relieve this situation? What system is used to track the total charge load inventory? What is the annual cost of this system?

As of January 26, 1979, the date on which the backlog was segregated into a separate processing strategy, the agency had a backlog of 69,060 Title VII charges. On October 1, 1981, the first day of FY 1982, the agency had a remaining backlog of only 15,755 Title VII charges. Of the 49 offices with a potential for having responsibility for processing backlog charges as of October 1, 1981, 16 had a backlog of between 0 and 100 charges and another 10 offices had backlogs of between 101 and 500 charges. In FY 1981, the agency closed 17,437 backlog charges using 155 investigative staff years. In FY 1982, the agency is programmed to utilize 97 investigative staff years on backlog processing.

As indicated, the agency plans to eliminate that backlog by the end of FY 1983, given current and expected staff resources. Taken overall, with 97 investigative staff years alloted to backlog in FY 1982, the agency should close approximately 10,000 such charges in FY 1982. This would leave approximately 4,000 backlog charges to be closed in FY 1983. In addition to alloting sufficient staff to accomplish that objective, the agency is just completing a hard inventory of backlog charges which should correct any data errors and close any charges which could have been closed earlier based on State action or for any other reason. This inventory process should be completed by June of 1982.

Title VII charges still represent the majority of charges coming to the agency. In FY 1981, 56,228 charges were filed directly with EEOC for processing. Of this number, 46,223, or 82 percent, were Title VII charges, 8,790, or 16 percent, were age discrimination charges, and 1,215, or 2 percent, were equal pay charges.

The percentages are similar for charges filed with the State and local agencies, then referred to this agency. From early data, the Commission does not expect a substantial change in this ratio for FY 1982. For FY 1983 projections will be processed soon and will be based on FY 1982 half-year data.

The agency utilizes a central computer with remote-entry terminals in each field office to operate its information system, which is called CSRS (complaint statistical and reporting system). Charges coming to the agency are entered into the system on receipt and tracked through the administrative process by means of dated and coded entries. Quarterly and upon request the system provides reports on both a detailed and summary nature.

The agency purchased the remote-data entry terminals at a one-time cost of $155,000. Our annual automated data-processing operating cost is approximately $1,225,000, which covers the following services: telephone lines, rentals of software, and the maintenance of equipment.

8. How many charges does EEOC now contract with state and local agencies to process instead of doing them itself? Has the use of these Section 706 agencies been very successful? How much has this program expended over the last five years? How many agencies currently have charge processing contacts with EEOC?

There are four types of EEOC contracts under which State and local agencies are performing in FY 1982, as follows:

FY 1982	Title VII new-charge contracts	38,695	charges
FY 1982	ADEA charge contracts	2,826	charges
FY 1981	ADEA charge contracts	2,235	charges
FY 1981	Title VII backlog contracts	3,424	charges
	TOTAL	47,180	charges

We think that this contracting program has been highly successful. In FY 1977, State and local agencies resolved slightly more than one-fourth of the national workload, or 18,429 charges. In FY 1981 they resolved 38,740, or 43 percent. The quality of agency performance in meeting Title VII standards has improved each year; in FY 1981, the overall acceptance rate of agencies under contract to the EEOC was 98 percent. The agencies originally had a backlog of 33,995 charges, but the current backlog contracts, which do not expire until March 31, 1983, are for 3,424 charges, which represents all remaining backlog charges. By the end of this fiscal year, September 30, 1982, we expect over 97 percent of the backlog charges to have been resolved, with the remainder completed on or before March 31, 1983.

Expenditures of State and local funds over the past five years is as follows:

FY 1978	$13,178,703	27,530	resolutions
FY 1979	14,710,814	31,999	resolutions
FY 1980	14,522,654	37,361	resolutions
FY 1981	17,427,147	39,970	resolutions
FY 1982	17,929,500*	47,180	resolutions
TOTAL	$77,768,818	184,040	resolutions

Sixty-eight State and local agencies currently have charge-processing contracts with EEOC. All contracts are fixed price: each agency receives a per-charge amount for each resolution accepted. The base amount is $375 per charge, which can be increased 10 percent by meeting incentive goals, to $412.50 per charge, or decreased by failure to meet any goals, to $337.50 per charge. Agencies presently receive an average of $396.00 per charge, which represents only a third or less of their total processing costs.

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*$15,329,500 obligated; $2,600,000 to be obligated for upward modifications and inventory-reduction contracts.

9. Since you have become Acting Chairman of EEOC, there has been an intense assessment of both the programmatic and administrative functions of the Commission. What has been the outcome of this? What conclusions have you made and what, if any, recommendations do you have at this time?

When I became the Acting Chairman of this Commission on March 4, 1982, there were several areas of concern I wished to address, having already served as Commissioner since December 21, 1981. These included the financial and administrative activities, with special attention to the existing management information system and a review of our program offices, particularly the Office of Review and Appeals.

I was aware of the GAO audit, and the agency's inadequate financial reports were of particular concern to me. The new Acting Executive Director dismissed the previous Budget Officer on March 5, 1982 and immediately set a priority of having updated financial records. Any GAO review since March 4, 1982 will surely confirm a much-improved situation in our accounting and budget offices. Bringing to EEOC a newly strengthened internal audit office should also assist in avoiding such deteriorating conditions in the future.

An evaluation of our FY 1983 and 1984 budget needs, compared to our resources, was also undertaken. In order to live within anticipated budget constraints and to continue to develop necessary case law on behalf of legitimately aggrieved charging parties through our litigation program, the Commission must move quickly to reduce the size of its current staff level by at least 200 positions over the next 17 months, consolidate several of its under-utilized field offices this year to reduce overhead costs for next year, and expand the use of the current $18 million state and local agency contract program so that those agencies can process additional individual discrimination charges in the future.

An OPM management evaluation review, to be completed in early May, addressing other concerns I have had, is discussed in greater detail in my answer to question 10.

Because of concerns about our management information systems, an independent evaluation of our 14 present and planned information systems, computer capacity and computer needs was completed on March 15th. It is anticipated that by early summer a reassessment will be completed so that any changes, such as a reduction in the use of present systems and the implementation of new, less costly systems, can be effected. A major problem with our current systems is that they are rather sophisticated and may be incompatible with the skills of our present workforce. In addition, the expensive on-line capacity to each of our 49 field offices may exceed our needs.

My last major concern has been our systemic program. Due to a bifurcated reporting procedure for the Office of Systemic Programs (see my answer to question 13), the General Counsel has no supervisory control over systemic charges until they have been investigated and the Commission has voted to initiate litigation. It is imperative that the General Counsel be involved in these cases from their inception to assure their legal sufficiency and consistency of enforcement.

A review of all the Commission's program offices was completed May 7, 1982 by Horace G. Bussell, a former EEOC office director and current consultant to this Commission His reports are helpful in pinpointing both inadequacies and overlapping program functions.

10. A Management Evaluation Review conducted by the Office of Personnel Management is now in progress at EEOC. When will this be completed and what results are anticipated from this review? This Committee would appreciate a copy of any OPM report you will receive as a result of this study.

An OPM management evaluation review of the Commission's Office of Administration was requested by EEOC on March 12th and began April 1st. This was sought in order to strengthen our Office of Administration, since that office performs some of the most critical yet routine functions of the agency, such as processing personnel actions, labor relations and records management and procurement. This review, which included desk audits of benchmark positions, will be completed by early May, and we will be happy to provide you with a copy.

11. What is EEOC's present full-time workforce staffing level? Are any increases or decreases expected to occur in the next 18 to 24 months?

The Commission's full-time staffing level, as of March 31, 1982, is 3210. Because we anticipate that our uncontrollable costs, such as rent, payroll, equipment and postage, will rise over the next 18 to 24 months and that our appropriations will not keep pace with these increases, we have recently set new personnel ceilings, reducing by approximately 110 positions the number of staff at headquarters and by 75 positions in field offices, so that by the beginning of FY 1984, we will have nearly 200 fewer employees. We fully expect these reductions to be accomplished through attrition, thereby obiviating the need for any reductions-in-force, since this reduction is to be achieved over the next 17 months.

12. The Office of Policy Implementation was created during the tenure of the last permanent Chairman, Eleanor Holmes Norton. What are the responsibilities of this office? What is the size of the staff? Does it report to the Chairman, the Commissioner or the Executive Director? Since its inception, who have been the Directors of this office, when did they serve in this capacity and is the Director a career appointee? Please address the same questions regarding the Office of Inter-Agency Coordination.

A) The Office of Policy Implementation, which reports to the Executive Director on administrative matters and to the Commission on policy matters, is responsible for formulating draft policy papers and memoranda that, if adopted by the Commission, articulate Commission policy on the effective implementation of EEO laws, regulations and Executive Orders. This office recommends to the Commission ways to use the regulatory and administrative process of the Commission by the use of proposed guidelines, decisions on individual charges of discrimination involving regulations and precedent-setting issues, interpretations of and public hearings on complex issues, and the translation of policy into operational form through manuals used by the Commission's compliance staff.

The Office of Policy Implementation is also responsible for convening and managing the agency's staff committee on internal EEOC policy (SCEP), which is comprised of OPI staff, special assistants to Commissioners, office of General Counsel staff, and is chaired each week by a different Commissioner.

Currently there are 32 employees in this office. The following persons have served as director of the office:

Peter Robertson (Career)	10/77 - 7/79
Frederick Dorsey (non-career SES)	5/79 - 8/80 and 6/81 - 2/82
Karen Danart (Acting) (temporary career SES)	8/80 - 6/81
Chris Roggerson (reserved career SES; rehired annuitant)	2/82 - present

B) The need for coordination among numerous Federal equal employment opportunity programs was recognized by the Congress in Section 715 of the Equal Employment Opportunity Act of 1972, which established an Equal Employment Opportunity Coordinating Council (EEOCC) with responsibility for:

> ...developing and implementing agreements, policies and practices designed to minimize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among the operations, agencies and branches of the Federal government responsible for the implementation and enforcement of equal employment opportunity legislation, orders, and policies.

The EEOCC lacked the staff and authority of a lead agency; as a result it was unsuccessful in accomplishing its mission. Reorganization Plan No. 1 of 1978 transferred the functions of the EEOCC to the Equal Employment Opportunity Commission. Executive Order 12067 further delineated the Commission's responsibilities for conducting a coordinated program to promote efficiency and develop uniform standards, policies and procedures for Federal agencies with equal employment responsibilities.

The Commission established the Office of Interagency Coordination (OIC) to carry out its coordination function. OIC has two major activities: Elimination of major problems of duplication, inconsistency and inefficiency in Federal equal employment programs, and coordination of proposed equal employment issuances submitted by Federal agencies (including proposed issuances of the Commission) with other affected agencies to assure consistency and promote more effective programs.

This Office, which has 28 employees, reports to the Chairman and to the Commission on policy matters, to the Executive Director on administrative matters. Since its creation in mid-1979, OIC has had two directors:

Francesta E. Farmer (non-career SES)	7/79 - 4/81
Douglas J. Bielan (Acting) (career)	4/81 - present

13. The Office of Systemic Programs includes functions and duties that were formerly under the direction of the General Counsel until this separate office was created during Chairman Norton's tenure. What are the duties of this office? Where does it report? What is the present size of the staff? How many cases or charges does it handle annually? Who have been the directors of this office? When did they serve in this capacity? Is this a career or non-career position?

The Office of Systemic Programs (OSP) was formed in 1977 out of elements drawn from several different offices within the Commission. OSP's litigation enforcement division was formerly in the Office of the General Counsel; its investigation division was in the former Office of Compliance, and several positions in its technical services division came from other Commission offices.

The Office of Systemic Programs is responsible for development and oversight of the Commission's program to identify and remedy systemic employment discrimination through the issuance of carefully selected Commissioner charges. Its principal duties and workload are as follows:

The field contact unit reviews proposed charges, investigative reports, decisions, and settlement agreements generated by the line systemic units located in the Commission's 22 district offices; provides training and assistance to the field units; and oversees their budget and the quantity and quality of their work. This unit oversees the 131 cases in the administrative process in field systemic units. It is anticipated that 38 of these cases will have been completed (settled or referred for litigation) and replaced on a one-to-one basis during FY 1982.

The technical services division provides technical guidance and assistance, principally to the Commission's systemic units but also to other administrative and litigation units, on such matters as labor market analyses, application of the uniform guidelines on employee selection procedures, analysis of computerized data, and the like. This division expects to provide substantial assistance on 45 cases during FY 1982.

The litigation enforcement division conducts litigation of systemic cases originating in headquarters, provides legal assistance to OSP's investigation division, and monitors consent decrees originating in headquarters. This division has 21 suits in process and expects at the beginning of FY 1983 to have completed 13 of them and initiated five new suits during FY 1982. It currently has responsibility for monitoring 16 consent decrees.

The investigation division proposes selection of, investigates, and conciliates Commissioner charges which are sufficiently large in scope or precedent-setting in nature that they have been deemed appropriate for headquarters processing. This division had 19 cases in process at the beginning of FY 1982 and expects to have completed 16 of them by the end of this fiscal year.

The Director of OSP reports to the Executive Director on all matters other than the conduct of litigation, which is overseen by the General Counsel. OSP staff currently includes 71 professionals and 19 clericals.

The Director of OSP is a career position, although one person serving in that capacity was a non-career SES employee, as indicated below. It has been held on either an acting or permanent basis by the following indidivuals:

David Zugswerdt	(Acting)	10/77 - 1/78
Lowell Johnston		1/78 - 3/78
Alvin Golub	(Acting)	4/78 - 7/78
Terrence Banks		7/78 - 3/79
David Zugswerdt	(Acting)	3/79 - 5/79
Michael Middleton		5/79 - 6/80
Frederick Dorsey	(non-career SES)	7/80 - 6/81
Debra Millenson	(Acting)	6/81 - 3/82
Constance Dupre	(Acting)	3/82 - present

14. The 1972 Civil Rights Act Amendments created a presidentially appointed General Counsel, confirmed by the Senate. How does this appointee interrelate with what is regarded as the "compliance" side of the Commission? Has a litigation strategy evolved either from the charges filed by individual complaints or a review of the EEO-1 through EEO-6 Employer Survey forms which might suggest the presence of pattern or practice possibilities? How many cases have been authorized for suit by EEOC? How many have been filed? How many have resulted in settlements prior to an initial trial and time frame? How many have gone to trial, Court of Appeals and the Supreme Court? How does the General Counsel's work relate to the Office of Systemic Programs?

There are a number of ways that the General Counsel interrelates with the compliance operations of the Commission: The Office of General Counsel reviews and advises the Commission on all policy decisions affecting the compliance process, including compliance manual issuances, directives, precedent-setting decisions on charges, and on all regulations and guidelines. The General Counsel is also responsible for providing legal advice and legal assistance to the Commissioners and to the Commission's operating offices.

There is continuous legal assistance and input at each crucial stage of the compliance process in the administrative processing of charges of discrimination. At the intake stage, which involves the initial receipt and perfection of a charge, attorneys are involved in advising EEOC's compliance personnel on jurisdictional matters, as well as reviewing charges for their potential as litigation vehicles for the Commission. During investigations of such charges, attorneys give advice on the investigative plan, including the evidence necessary to make a litigation-worthy determination that there is reasonable cause to believe that discrimination has occurred. Should the issuance of a subpoena be necessary to obtain information from a respondent during the investigation, the subpoena is reviewed by the legal staff. If a subpoena is challenged by respondent, recommendations as to whether the subpoena should be revoked, modified or left unchanged is made by the General Counsel to the Commission. If subpoena enforcement litigation is necessary, that litigation must be approved and litigated under the direction of the General Counsel. Attorneys in the field also review conciliation proposals for legal sufficiency.

One of the litigation strategies that is presently being utilized is the early litigation identification program (ELI), described above, where appropriate charges of discrimination filed by individuals but which often are class in nature are reviewed, investigated and selected as ELI charges based on prescribed standards, with the intent that should reasonable cause be found and conciliation fail, the case will be recommended for litigation.

Review of the Commission's employer survey forms (EEO-1 through EEO-6 reports) is an integral part of the agency's systemic program for issuing Commissioner charges to address broader patterns and practices of discrimination. The legal unit in the headquarters' Office of Systemic Programs is responsible to the General Counsel with respect to the litigation of cases assigned to that unit. In turn, the General Counsel provides legal advice and assistance to systemic units in headquarters and in the field on the administrative processing of Commissioner charges issued under this program. The General Counsel reviews all recommendations for litigation of Commissioner charges, and should litigation be approved, he directs and supervises such litigation.

Since FY 1978, the last year for which reliable records exist, the Commission has authorized 1,086 suits, filed 1,357, gone to trial 204 times, had 118 cases dismissed, settled 901, and has filed 217 appellate briefs, which includes some reply briefs in case where EEOC was the defendant. Thus, the Commission has filed appeals in some 200 cases since FY 1978, and of that number, about two per year have been filed in the Supreme Court.

Although the Commission has not kept records on the average time it takes to settle a suit or the number resolved prior to trial, our Office of General Counsel has conducted a special survey of seven representative EEOC field offices for the period October 1, 1979 to the present. (Records for prior years are unavailable). Those offices (Atlanta, Chicago, Dallas, Philadelphia, St. Louis, San Francisco and Seattle) settled an average of 45 cases each for that period, 84 percent of them before trial, and the average time, from the date of filing until pre-trial settlement, was 19 months.

Attachment 1
Section 717

GROUP I	DATE RECEIVED MULTI-YEAR PLANS
✓ADMINISTRATIVE OFFICE OF THE U.S. COURTS	10/30/81
✓ALASKA NATURAL GAS TRANSPORTATION SYSTEM *	
AMERICAN BATTLE MONUMENTS COMMISSION *	
ARMS CONTROL AND DISARMAMENT AGENCY	
ARMY	
✓Headquarters	
Office of the Secretary, Headquarters	
Army Forces Command	1/12/82
✓Army Training & Doctrine Command	1/26/82
✓Army Corps of Engineers	1/12/82
✓Army Health Services Command	1/12/82
✓Army Recruiting Command	
✓Military District of Washington	12/30/81
✓Army Communications Command	
✓Military Air Traffic Management Comm.	1/12/82
✓Intelligence Security Command	1/26/82
✓Western Command	1/12/82
✓Material Development & Readiness Comm.	1/12/82
ARMY-AIR FORCE EXCHANGE SERVICE	
✓Alamo Exchange Region, Texas	
✓Capitol Exchange Region, Virginia HQ	
✓Western District, Region, California	
✓Eastern District, Region, Georgia	
✓Ohio Valley Exhange Region	
✓Regional, Dallas, Texas	11/25/81
✓Golden Gate Exchange, Region, SF	
✓COMMISSION ON CIVIL RIGHTS	10/23/81
✓COMMITTEE FOR PURCHASE FROM BLIND *	5/19/81
✓COMMODITY FUTURES TRADING COMM.	12/4/81
✓CONSUMER PRODUCT SAFETY COMM.	
EDUCATION	
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION	
EXECUTIVE OFFICE OF THE PRESIDENT	3/4/82
✓FEDERAL COMMUNICATIONS COMMISSION	12/3/81
✓FEDERAL DEPOSIT INSURANCE CORP.	10/13/81
Agency-wide	
Headquarters	
Division of Suspension	
Division of Liquidation	

* AGENCY WITH LESS THAN 100 EMPLOYEES
✓AGENCIES THAT HAVE SUBMITTED ACCOMPLISHMENT REPORTS

GROUP I	DATE RECEIVED MULTI-YEAR PLANS
FEDERAL ELECTION COMMISSION	
FEDERAL LABOR RELATIONS AUTHORITY	8/25/81
✓FEDERAL MARITIME COMMISSION	10/5/81
FEDERAL MINE SAFETY & HEALTH REVIEW COMM. *	10/6/81
FEDERAL RESERVE SYSTEM	12/4/81
✓FOREIGN CLAIMS SETTLEMENT COMMISSION *	10/6/81
HARRY S. TRUMAN SCHOLARSHIP FUND *	6/23/81
✓HEALTH AND HUMAN SERVICES	
✓Office of the Secretary	
✓Office of Human Development	
✓Health Care Financing Admin.	
Office of Child Support Enforcement	
✓Social Security Administration	
✓Public Health Service	
HOUSING AND URBAN DEVELOPMENT	
✓Boston Region	
✓New York Region	
✓Philadelphia Region	
✓Atlanta Region	
✓Chicago Region	
✓Forth Worth Region	
✓Kansas City Region	
✓Denver Region	
✓San Francisco Region	
✓Seattle Region	
INTERIOR	
✓Office of the Secretary	10/30/81
Water and Power Resources Service	
Bureau of Indian Affairs	3/3/82
✓Bureau of Mines	3/3/82
✓Fish and Wildlife Service	10/30/81
✓Geological Survey	10/30/81
✓National Park Service	10/30/81
✓Office of Surface Mining	
✓Bureau of Land Management	
Bureau of Reclamation	10/30/81

* AGENCY WITH LESS THAN 100 EMPLOYEES

✓ AGENCIES THAT HAVE SUBMITTED ACCOMPLISHMENT REPORTS

GROUP I

	DATE RECEIVED MULTI-YEAR PLANS
NUCLEAR REGULATORY COMMISSION	
PENNSYLVANIA AVENUE DEVELOPMENT CORP. *	
POSTAL SERVICE	4/5/82
✓POSTAL RATE COMMISSION *	11/6/81
✓RAILROAD RETIREMENT BOARD	12/21/81
SELECTIVE SERVICE SYSTEM*	
✓SMITHSONIAN INSTITUTION	2/9/82
✓TAX COURT	
TENNESSEE VALLEY AUTHORITY	
TVA-wide	4/1/82
✓Office of the General Manager	12/9/81
Office of General Counsel	
✓Office of Management Services	12/3/81
✓Office of Engineering Design & Construction	12/3/81
✓Office of Economic and Community Development	2/1/82
✓Office of Natural Resources	12/10/81
✓Office of Power	12/1/81
Office of Agricultural & Chemical Development	12/9/81
TRANSPORTATION	
Coast Guard	
Federal Highway Administration	
Federal Railroad Administration	
National Highway Traffic Administration	
St. Lawrence Seaway Development Corp.	
Research & Special Program Administration	1/6/82
Office of the Secretary	
Office of the Inspector General	
Federal Aviation Administration	
Urban Mass Transportation Admin.	

* AGENCY WITH LESS THAN 100 EMPLOYEES

✓AGENCIES THAT HAVE SUBMITTED ACCOMPLISHMENT REPORTS

GROUP I

	DATE RECEIVED MULTI-YEAR PLANS
TREASURY	
✓Office of the Secretary	12/28/81
✓Bureau of Alcohol, Tobacco & Firearms	12/30/81
✓Bureau of Engraving and Printing	12/30/81
Bureau of Government Financial Operations	12/30/81
Bureau of the Mint	
✓Bureau of Public Debt	12/30/81
Comptroller of the Currency	12/30/81
✓Internal Revenue Service	11/10/81
✓Customs Service	
Headquarters	3/8/82
Region I	2/9/82
Region II	2/9/81
Region III	2/9/81
Region IV	2/9/81
Region V	2/9/81
Region VI	2/9/81
Region VII	2/9/81
Region VIII	2/9/81
Region IX	2/9/81
Savings Bonds	
Secret Service	10/7/81
Federal Law Enforcement Training Center	TO FIELD
✓VETERANS ADMINISTRATION	

✓AGENCIES THAT HAVE SUBMITTED ACCOMPLISHMENT REPORTS

GROUP I	DATE RECEIVED MULTI-YEAR PLANS
✓INTERNATIONAL COMMUNICATION AGENCY	4/12/82
✓NATIONAL AERONAUTICS & SPACE ADMIN.	10/1/81
✓NATIONAL ENDOWMENT FOR THE ARTS	12/8/81
✓NATIONAL ENDOWMENT FOR THE HUMANITIES	10/21/81
NATIONAL GUARD BUREAU	
✓NATIONAL MEDIATION BOARD *	10/22/81
NATIONAL SCIENCE FOUNDATION	2/10/82
NATIONAL TRANSPORTATION SAFETY BOARD	10/26/81
✓NAVY	
NAVYWIDE	2/17/82
MOC-WIDE	2/17/82
Office of the Secretary	
Secretariat and Staff Office	4/19/82
Chief of Naval Operations	
Chief of Naval Research	
Chief of Naval Reserves	
Chief of Education and Training	
Chief of Naval Materiel Command	
Marine Corps	
Naval Security Group Command	
Naval Telecommunication Command	
Bureau of Medicine and Surgery	
Naval Intelligence Command	
Naval Military Personnel Command	
Naval Civilian Personnel Command	
Naval Oceanography Command	
U.S. Atlantic Fleet	
U.S. Pacific Fleet	

* AGENCY WITH LESS THAN 100 EMPLOYEES

✓AGENCIES THAT HAVE SUBMITTED ACCOMPLISHMENT REPORTS

GROUP III

	DATE RECEIVED MULTI-YEAR PLANS
ACTION	
ADMINISTRATIVE CONFERENCE OF THE U.S.	
✓ADVISORY COMM. ON INTERGOVERNMENTAL RELATIONS *	
✓ADVISORY COMMITTEE ON FEDERAL PAY *	
ADVISORY COUNCIL FOR HISTORIC PRESERVATION *	
AGENCY FOR INTERNATIONAL DEVELOPMENT	3/18/82
✓AGRICULTURE	
✓ Office of the Secretary	2/4/82
✓ Economics	2/4/82
✓Natural Resources and ✓ Environment	2/4/82
✓Small Community and Rural Developmant	2/4/82
✓Office of International Affairs and Commodity Programs	2/4/82
✓Animal & Plant Health Inspection Service	2/4/82
✓Economic Statistics & Cooperative Service	2/4/82
✓Food and Consumer Service	2/4/82
✓Science and Education Service	2/4/82
AIR FORCE	
Headquarters	1/25/82
Air National Guard	1/25/82
✓Military Airlift Command	1/25/82
Air Force Academy	1/25/82
Air Force Systems Command	1/25/82
Tactical Air Force Command	1/25/82
Air Force Logistics Command	1/25/82
Strategic Air Command	1/25/82
Air Force Training Command	1/25/82
Air Force ~~Reserve~~	1/25/82
Air Force Europe	1/25/82
Alaskan Air Command	1/25/82
Electronic Service Command	1/25/82
Air Force Pacific Command	1/25/82

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* AGENCY WITH LESS THAN 100 EMPLOYEES

✓AGENCIES THAT HAVE SUBMITTED ACCOMPLISHMENT REPORTS

GROUP III

	DATE RECEIVED MULTI-YEAR PLANS
APPALACIAN REGIONAL COMMISSION *	
✓ BOARD FOR INTERNATIONAL BROADCASTING *	7/21/81
✓ CIVIL AERONAUTICS BOARD	10/2/81
COMMERCE	
Commerce-Wide	3/15/82
Office of the Secretary	3/15/82
Bureau of the Census	3/15/82
Bureau of Economic Analysis	3/15/82
International Trade Administration	3/15/82
National Bureau of Standards	3/15/82
National Oceanic & Atmospheric Administration	3/15/82
National Telecommunication & Information Administration	3/15/82
Patent & Trade Office	3/15/82
National Technical Information Service	3/15/82
U. S. Travel Service	3/15/82
Minority Business Development Agency	3/15/82
Bureau of Industrial Economics	3/15/82
COMMISSION ON FINE ARTS	
DEFENSE	
Office of the Secretary	
Defense Investigative Agency	10/2/81
✓ Defense Contract Audit Agency	10/1/81
✓ Office of Dependent Schools	12/28/81
Defense Intelligence Command	
✓ Defense Communications Command	10/23/81
✓ Defense Mapping Agency	11/3/81
✓ Defense Nuclear Agency	1/7/82
✓ Uniform Service University of Health Sciences	9/15/81
Defense Audit Agency	
✓ Defense Logistics Agency	11/16/81
Defense Audiovisual Agency	
✓ Office of Civilian Health	1/4/82

* AGENCY WITH LESS THAN 100 EMPLOYEES

✓ AGENCIES THAT HAVE SUBMITTED ACCOMPLISHMENT REPORTS

GROUP III

	DATE RECEIVED MULTI-YEAR PLANS
✓ENERGY	
Headquarters	2/9/82
Western Power Administration	2/9/82
Region V. Dallas, Texas	2/9/82
Albuquerque Operations Office	2/9/82
Oak Ridge Operations Office	2/9/82
Bonneville Power Administration	2/9/82
Chicago Operations & Regional Office	2/9/82
✓ENVIRONMENTAL PROTECTION AGENCY	
✓Headquarters	12/1/81
✓Region I	12/1/81
✓Region II	12/1/81
✓Region III	12/1/81
✓Region IV	12/1/81
✓Region V	12/1/81
✓Region VI	12/1/81
✓Region VII	12/1/81
✓Region VIII	12/1/81
✓Region IX	12/1/81
✓Region X	12/1/81
✓Cincinnati - Environmental Research Lab.	12/1/81
✓Las Vegas	12/1/81
✓Research Triangle Park, N.C.	12/1/81
EXPORT-IMPORT BANK	11/6/81
FARM CREDIT ADMINISTRATION	
FEDERAL EMERGENCY MANAGEMENT AGENCY	12/9/81
FEDERAL HOME LOAN BANK BOARD	12/23/81
FEDERAL MEDIATION AND CONCILIATION SERVICE	
✓FEDERAL TRADE COMMISSION	1/18/82
✓GENERAL SERVICES ADMINISTRATION	12/1/81
GOVERNMENT PRINTING OFFICE	
INTERSTATE COMMERCE COMMISSION	4/14/82

* AGENCY WITH LESS THAN 100 EMPLOYEES

✓AGENCIES THAT HAVE SUBMITTED ACCOMPLISHMENT REPORTS

GROUP III	DATE RECEIVED MULTI-YEAR PLANS
INTER-AMERICAN FOUNDATION *	
INTERNATIONAL TRADE COMMISSION	3/8/82
JAPAN-U.S. FRIENDSHIP COMMISSION *	
JUSTICE	
Drug Enforcement Administration	
Federal Bureau of Investigation	
Immigration and Naturalization Service	
Office of Boards and Divisions	
U.S. Attorney's Office	
Bureau of Prisons	
U.S. Marshall's Service	
✓LABOR	
Employment Standards Admin.	10/9/81
Employment & Training Admin.	4/19/82
Solicitor of Labor	
Labor Management Services Admin.	11/19/81
Asst. Secretary for Administration and Management	
Office of the Secretary	
Occupational Health and Safety Administation	
Bureau of International Labor Affairs	
Mine Safety and Health Administration	
Bureau of Labor Statistics	

* AGENCY WITH LESS THAN 100 EMPLOYEES
✓ AGENCIES THAT HAVE SUBMITTED ACCOMPLISHMENT REPORTS

GROUP III	DATE RECEIVED MULTI-YEAR PLANS
✓MARINE MAMMAL COMMISSION *	9/21/81
✓MERIT SYSTEMS PROTECTION BOARD	12/30/81
METRIC BOARD *	
✓NATIONAL CREDIT UNION ADMINISTRATION	10/30/81
NATIONAL ADVISORY COUNCIL ON ECONOMIC OPPORTUNITY *	10/24/81
NATIONAL CAPITOL PLANNING COMMISSION *	12/9/81
NATIONAL COMMISSION ON AIR QUALITY *	
✓NATIONAL GALLERY OF ART	
✓NATIONAL LABOR RELATIONS BOARD	1/27/82
OCCUPATIONAL SAFETY & HEALTH REVIEW COMM.	
✓OFFICE OF PERSONNEL MANAGEMENT	12/2/81
OVERSEAS PRIVATE INVESTMENT CORP.	
✓PANAMA CANAL COMMISSION	9/8/81
✓PENSION BENEFIT AND GUARANTY CORP.	11/17/81
✓PRESIDENT'S COMM. FOR STUDY OF ETHICAL etc. *	10/9/81
✓SECURITIES AND EXCHANGE COMMISSION	
SMALL BUSINESS ADMINISTRATION	
✓SOLDIER'S AND AIRMEN'S HOME	9/29/81
STATE	4/1/82

* AGENCY WITH LESS THAN 100 EMPLOYEES
✓ AGENCIES THAT HAVE SUBMITTED ACCOMPLISHMENT REPORTS

ANSWERS TO QUESTIONS SUBMITTED BY SENATOR HATCH

I. SEVERAL RECENT CASES HAVE AWARDED ATTORNEY'S FEES AGAINST THE EEOC, SHARPLY CRITICIZING ITS HANDLING OF CASES. FOR EXAMPLE, IN EEOC V. UNION CAMP CORP., 27 CCH E.P.D. PARAGRAPH 32,344 (W.D. MICH. 1982), THE COURT STATED:

> HERE THE CHARGING PARTY CRIES DISCRIMINATION AND THE EEOC, DESPITE AN UTTER LACK OF EVIDENCE, SYMPATHETICALLY FILES SUIT, HOPING THAT THE DEFENDANT WILL SURRENDER RATHER THAN GO TO TRIAL. WHEN, AS HERE, DEFENDANT REFUSES TO KNUCKLE UNDER, EEOC GOES TO A LENGTHY TRIAL, TRIES THE CASE POORLY, LOSES AND HOPES A LESSON HAS BEEN TAUGHT. A BETTER CASE FOR AN AWARD OF ATTORNEY'S FEES COULD NOT BE MADE.

SIMILARLY, IN EEOC V. SHONEY, INC., NO. 81-G-0509-S, SLIP OP. AT ____ (N.D. ALA. MAR. 23, 1982), THE COURT FOUND THAT:

> (T)HE EEOC HAS FAILED TO EXPLAIN, DENY OR MITIGATE ITS CONTINUATION OF THIS CASE WITH THE LACK OF EVIDENCE TO SHOW A PRIMA FACIE CASE. THIS FUNDAMENTAL FAILURE WAS COMPOUNDED BY THE TWISTING OF FACTS WRITTEN INTO THE CHARGE, (AND) ITS DECEITFUL SUPPRESSION OF THE DOCUMENT THAT WOULD REVEAL THIS TWISTING. . . .

SUCH AWARDS DIVERT INCREASINGLY SCARE RESOURCES FROM LEGITIMATE ENFORCEMENT EFFORTS AND WASTE THE TAX-PAYER'S MONEY. I WOULD LIKE TO ASK YOU WHETHER YOU HAVE INVESTIGATED THE HANDLING OF EACH OF THESE CASES AND WITH WHAT RESULTS.

Prior to the decision of the United States Supreme Court in the 1978 Case of EEOC v. Christiansburgs Garment Co., 434 U.S. 412, there was confusion among the circuits as to the standard to be applied in awarding attorney's fees against the Commission. Since that decision, attorneys fees can be awarded against the Commission only in those cases where the court finds that the plaintiff's claim is "frivolous, unreasonable or groundless, or that the plaintiff continued to litigate after it clearly became so." Under that standard, any award of attorneys fees is a cause of concern because of the factual finding that the EEOC engaged in frivolous, unreasonable or vexatious litigation. The Office of General Counsel has taken steps to review all attorneys fees awards, the circumstances under which attorneys fees were awarded, and the manner in which the cases were handled by Commission attorneys.

II. WHAT PLANS DO YOU HAVE TO PREVENT THIS KIND OF CONDUCT IN THE FUTURE?

An extensive memorandum has been prepared by the Trial Division of the Office of General Counsel to enable us to identify those factors upon which Courts rely in attorneys fees awards against the Commission. Preliminary steps have been taken to establish a new case evaluation procedure to identify weak cases. Cases which are identified as being marginal or not susceptible of easy proof will be monitored more closely, with periodic reports required by the attorney conducting the litigation to determine whether at any point prior to trial it should be apparent to the Commission that it is unreasonable to continue the litigation based upon the discovery or development of evidence.

In addition, steps have been taken to develop training programs to improve the conduct of litigation by individual attorneys who are responsible for conducting trials. The Commission is seeking to establish training opportunities in conjunction with members of the private bar in an effort to permit Commission attorneys to more adequately evaluate defenses to Title VII claims.

Accordingly, the General Counsel's Office has immediately instituted more stringent review in the selection of cases for litigation. Those cases which indicate a possibility of an award of attorney's fees have either been rejected in the exercise of prosecutorial discretion or have been returned to field offices for further development. Until such time as new case evaluation procedures are in place and training procedures are implemented for trial attorneys, it is felt that the most important immediate step to be taken is a much more stringent review of cases which are to be presented to the Commission for filing.

III. THE EEOC BUDGET REQUEST FOR 1983 IS DOWN APPROXIMATELY $5.2 MILLION FROM THE 1982 BASE COST OF OPERATIONS. OF THE $144.9 MILLION REQUESTED, $124.5 MILLION IS SLATED FOR ENFORCEMENT. THERE HAS BEEN SOME CONTROVERSY ABOUT WHETHER THE COMMISSION SHOULD CONCENTRATE ON BIG BROAD ENFORCEMENT ACTIONS INVOLVING CLASS-WIDE CHARGES AS OPPOSED TO INDIVIDUAL COMPLAINTS. WOULD YOU PLEASE STATE WHAT KIND OF CRITERIA YOU FOUND IN PLACE AT EEOC WHEN YOU ARRIVED FOR SELECTING TARGETS FOR CLASS-TYPE INVESTIGATIONS AND FOR FILING CLASS-TYPE LITIGATION.

The Commission has two programs in place which are utilized for the identification and targeting of class-type investigations and litigation. The programs are:

1) The ELI Program - The ELI Program (Early Litigation Identification) utilizes charges filed by members of the public. Charges received in a Field Office are reviewed immediately upon receipt to determine their suitability for the program. In selecting ELI's, a field office utilizes the data presented by the Charging Party at filing, an issues list, and the office knowledge about the employer. In addition, a

field office considers the potential impact on an employer and employees, impact on the employer community of an area, the potential, based on available data, of a successful conclusion to the charge, the willingness of the charging party to participate in the program, and the potential cost of the investigation and litigation activity weiged against available resources and possible outcome.

2) The Systemic Program - The Commission in 1978 adopted a set of standards for the selection of subjects for systemic inquiry. In applying these standards, the Commission's primary focus is on the strength of the evidence, the severity of the discrimination, the scope of the anticipated relief, and the manageability of the case. Other factors which are taken into account include provision for an appropriate geographic dispersion of cases; assurance that cases overall involve a reasonable mix of sex, race, and national origin issues; and determination of whether the subject is part of an industry that appears to have significant EEO problems, and whether these problems have previously been addressed.

IV. WHAT PRIORITIES WILL THE COMMISSION ESTABLISH IN THE FUTURE TO DETERMINE WHETHER IT WILL INITIATE A CLASS-TYPE INVESTIGATION OR LAWSUIT.

I plan in the near future to review along with the Commission the criteria and priorities for initiating class-type investigations or lawsuits. I believe such a review is overdue on the part of the Commission.

V. WHAT STEPS WILL THE COMMISSION TAKE TO INSURE AN EXPEDITIOUS EXPENDITURE OF AGENCY RESOURCES WHEN IT LAUNCHES A MAJOR INVESTIGATION?

The following steps have been taken to ensure that major investigations are conducted efficiently:

--Detailed guidance has been provided field offices on the structure and conduct of systemic investigations.

—Headquarters staff reviews, approves, and monitors the objectives established by field systemic units for both overall caseload and completion of the various stages of each systemic investigation.

—Field systemic units are required to coordinate with legal units to ensure that their investigations will support litigation if conciliation fails.

—Headquarters staff provides technical asssistance during the conduct of systemic investigations, and reviews and approves the findings and conciliation proposals in each case.

—Field systemic units submit quarterly projections of their anticipated expenditures for outside contracts, and any contract for $2500 or more must be approved in headquarters.

—Headquarters staff maintains a system for monitoring on a case-by-case basis costs resulting from the field's use of the Commission's computerized data analysis system.

VI. WILL DIFFERENT STANDARDS BE EMPLOYED WHEN THE COMMISSION FILES A MAJOR CASE IN COURT, AND, IF SO, WHAT WILL THEY BE?

The standards applied when selecting a case for litigation are generally the same as when selecting a case for investigation, with two major differences. First, because a much greater amount of information is available prior to suit than prior to investigation, including the respondent's explanations and justifications for its practices, selection of a case for litigation normally requires more thorough and convincing evidence than selection of a case for investigation. Second, the minimum scope of proposed investigations tends to be greater than the minimum scope of proposed suits, because in selecting cases for systemic investigation the Commission is seeking to identify those situations which involve the most serious problems, whereas selection of a case for systemic litigation merely requires that the investigation have disclosed at least one significant systemic violation. In other words, cases selected for systemic litigation are generally narrower and more focused than cases which have been selected for systemic investigation.

ANSWERS TO QUESTIONS SUBMITTED BY SENATOR EAGLETON

I. HOW MANY COMPLAINTS HAVE BEEN FILED WITH THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION SINCE IMPLEMENTATION OF THE 1977 REORGANIZATION PLAN?

The 1977 Reorganization Plan, initiated with model office openings in Baltimore, Dallas and Chicago was fully implemented on January 29, 1979. Data compatible with the reorganization covers the period from FY 78 to 2nd Quarter FY 82. The following chart reflects all charges filed with the Commission during that period.

	Charges Filed		
Fiscal Year	Originally With EEOC	Originally With State and Local FEPC's	Total
1978	37,390	27,189	64,579
1979	35,279	31,290	66,569
1980	45,382	33,486	79,868
1981	56,228	36,989	93,217
1982 (thru 3/31)	24,358	16,322	40,680

II. HOW MANY OF THOSE COMPLAINTS HAVE INVOKED A SYSTEMIC INVESTIGATION BY THE COMMISSION?

Systemic charges are filed following a review of various selection criteria one of which is the existence of a record of prior individual charge filings. Other selection criteria include overrall EEO profile and workforce utilization. Since multiple criteria are relied upon it is difficult to attribute the selection of a particular systemic chaarge to the fact that individual charges were also filed against the same respondent.

The first charge under the Commission's systemic program was filed in August of 1978. To date 132 systemic charges have been filed, of which approximately 80% were lodged against respondents with a history of prior individual charge filings.

III. HOW MANY CASES HAVE BEEN BROUGHT BY THE COMMISSION SINCE JANUARY 1981 BOTH INDIVIDUAL CASES AND CLASS CASES?

1981	
January, February, March	92
April, May, June	122
July, August, September	131
October, November, December	37

1982	
January, February, March	74
April May	35
Total	491

The figures for the year 1982 were cut off at the end of May since, obviously, the figures for June are not yet reported.

IV. IN YOUR TESTIMONY AT YOUR CONFIRMATION HEARING, YOU AND SENATOR HATCH HAD A RATHER LENGTHY EXCHANGE REGARDING THE PROBLEMS ASSOCIATED WITH THE CHAIRMAN OF THE COMMISSION GETTING TOO INVOLVED IN THE DAY-TO-DAY ADMINISTRATIVE ASPECTS OF THE AGENCY RATHER THAN PERFORMING THE CHAIRMAN'S FUNCTION AS A DIRECTOR OF POLICY. YET TODAY, YOU INDICATE IN YOUR STATEMENT THAT YOU HAVE TEMPORARILY ASSUMED THE POSITION OF EXECUTIVE DIRECTOR OF THE COMMISSION. WHAT ARE YOUR PLANS FOR FILLING THE EXECUTIVE DIRECTOR POSITION?

I have initiated a task force to assist me in analyzing alternative organizational structures for the Commission. As part of that study, the role and/or need for various management positions are being examined. In the meantime, I am exercising the Executive Director's management oversight responsibilities and the Deputy Executive Director is addressing daily administrative activities.

V. YOU TESTIFIED THAT YOU WERE LOOKING AT CHANGES IN THE RAPID CASE PROCESSING SYSTEM. DO YOU HAVE ANY PLANS TO CHANGE THE SYSTEMIC DISCRIMINATION PROGRAM AS IT IS PRESENTLY SET UP. SPECIFICALLY, IS THERE ANY THOUGHT BEING GIVEN TO PLACING THE SYSTEMIC DISCRIMINATION PROGRAM DIRECTLY UNDER THE OFFICE OF GENERAL COUNSEL?

The systemic Program is also being analyzed as part of my organizational study of the Commission. We are not considering the placement of the entire Systemic Program under the Office of General Counsel, although one option would be for the Program's litigation function to be assigned to that office. However, I have not made any decisions on that issue to date.

BACKGROUND

The former Loan Fund Program was terminated on September 30,1980.

The former Loan Fund Program was started on September 29, 1978, as a one-year grant in the three district office areas of Baltimore, Chicago and Dallas. The grant was to provide loans to pay litigation costs for plaintiffs' attorneys in Title VII actions and to test the concept of a loan fund program in order to determine its impact in providing assistance to the Title VII bar in the three areas. The ultimate goal was for the loan fund to become independently operated and maintained.

The grant award of a maximum of $145,000, $100,000 for loans and $45,000 for administrative costs, was made to three organizations: The National Bar Association for the Baltimore Office Area, the Chicago Lawyers Committee for Civil Rights Under Law for the Chicago District Office Area and the Women's Law Center, Inc., for the Dallas District Office Area.

The grant provided that a maximum of $1,500 could be loaned for an individual case, and a maximum of $7,500 for a class action. These maximums could be raised for a particular case only if the Regional Attorney and the former Office of Special Projects and Programs jointly approved.

During the second year of operation of the former Loan Fund, a new loan fund was added, the jurisdictional boundaries for each loan fund was changed to correspond, as near as possible, to the Federal Judicial Circuits and the loans and administrative costs were increased to $150,000 and $50,000 respectively. Thus, the Atlanta program funded cases in the Fifth Circuit, excluding the State of Texas, the Baltimore program funded cases in the Fourth and D.C. Circuits, the Chicago program funded cases in the Seventh Circuit, and the Dallas program funded cases in the Tenth Circuit and the State of Texas.

THE WOMEN'S LAW CENTER

The Women's Law Center, Inc. (hereinafter WLC) was a Texas corporation, whose Executive Director and President was Dr. Delores Ferrell. In October 1978, after the EEOC grant was awarded, WLC received two CETA contracts, one from the City of Dallas and one from the State of Texas. These two CETA contracts and the EEOC loan fund grant constituted all of the funding and business operation of WLC. WLC hired Erin Sneed, a Dallas Lawyer, to be the Project Director of the EEOC Loan Fund Program. Ms. Sneed was the only person connected with the program who was a member of the Texas Bar. She was responsible for processing all loan applications. Dr. Ferrell, a graduate of an unaccredited law school and not admitted to any bar, was responsible for program publicity and overall administration. She was to devote 25% of her time to the program In addition, there was one clerical worker assigned to the program.

In May 1979, after investigation by the City of Dallas and the State of Texas, the two CETA contracts with WLC were cancelled. The reasons cited for the cancellation included: overstating by WLC of amounts needed for rent and salaries, improper recordkeeping of CETA employee's time, and use of CETA employees for non-program purposes. Dr. Ferrell left Dallas in late May and went to California. She wrote to the former Office of Special Projects in a letter dated June 11, 1979, "the Board of Women's Law Centers has voted to move its headquarters from Dallas, Texas, to Los Angeles, California, and will no longer maintain offices in Dallas."

The Contracts and Procurement Division was advised of the developments in the WLC situation, as well as representatives of Legal Counsel Division. The Director of Contracts and Procurement Division contacted Dr. Ferrell as to the possibility of transferring the Loan Fund Program from WLC to the Mexican American Legal Defense and Educational Fund (hereinafter MALDEF). MALDEF was the only other offeror for the loan fund, whose proposal was found to be technically acceptable by an evaluation panel that evaluated all proposals submitted. MALDEF was also contacted as to the possibility of accepting the transfer of the Loan Fund Program from WLC for the remainder of the grant period. Dr. Ferrell stated that she would agree to the transfer for the remainder of the grant period and MALDEF stated that it would accept the transfer and administer the loan fund for the remainder of the grant period. The actual transfer, however, did not occur in time before the grant period ended on September 27, 1979.

When the Office of Special Projects and Programs received Dr. Ferrell's letter advising of the intended move, fiscal controls were instituted to make certain that the Office of Special Projects and Programs remained in a position to determine the grantee's compliance with the technical requirements of the contract. That office, after considering all of the facts and circumstances surrounding the operation of the Dallas Office, decided to take the following steps:

1. Velma Mitchell of the Regional Treasury Disbursing Center in Austin, Texas, was contacted and instructed not to pay any SF 183's submitted by Women's Law Centers, Inc., unless prior approval was obtained by the Office of Special Projects and Programs. This procedure was to make sure that excessive amounts of money were not suddenly withdrawn.

2. The Private Bar Coordinator in Dallas was required to begin co-signing all checks regarding payments under the loan fund program with the Project Director of the Women's Law Centers, Inc. He was not requested to and did not perform any accounting of the program. However, he did check to make sure that reasonable amounts were paid for appoopriate purposes.

The Women for Change, Inc. was awarded the Dallas Loan Fund Contract on September, 1979. The Women for Change, Inc. was assigned all accounts receivables, property, furniture and the remainding funds which were committed to plaintiffs' attorneys.

1. How did the City of Dallas and the State of Texas investigations relate to EEOC's contractual relationship with the Women's Law Center (WLC)?

The Women's Law Center, Inc. (WLC) was funded by the Commission in FY '78. Subsequently in May 1979, after investigations by the City of Dallas and the State of Texas, the two CETA Contracts let by the City of Dallas and the State of Texas to WLC were cancelled for cause. The Contracts and Procurement Division and the Legal Counsel Division of the Office of General Counsel were advised of this development.

Although efforts were made to effectuate the transfer of the EEOC Contract from WLC to the Mexican American Legal Defense Educational Fund (MALDEF), another community agency, the contract terminated on September 28, 1979 before a formal transfer had been carried out.

The former Office of Special Projects, after considering the facts and circumstances surrounding the investigation and findings on WLC, instituted steps to protect the government's interest. Those steps included requesting the Regional Treasury Disbursing Center in Austin, Texas, to make no payments on SF 183 (Letter of Credit) to WLC without prior approval of the Office of Special Projects.

2. Why did contractor buy furniture and was it permissible under the Contract?

The Contractor was authorized by the Contract No. EEO-C-0012, effective date September 29, 1978, to expend funds for office furniture. The Contract did not specify whether the office furniture was to be purchased or leased. However, an explanatory listing of office furniture items submitted by WLC reflect furniture purchase prices. The furniture and equipment purchased with EEOC funds was valued at $2,735.

3. What kinds of cases were funded under the Loan Fund? The cases funded were Title VII cases (race, sex, religion, national origin and color).

The Loan Fund Contract stipulated that loans application were to be considered according to the following priorities:

1. Cause cases which fail conciliation and which will not be litigated by the Commission;
2. Cases from the expedited processing system;
3. Cases from the previous processing system backlog;
4. All other cases according to the particular circumstances, except cause cases are to always have priority over no cause cases.

In addition, the "Contract" provides that each "Contractor" shall consider the following criteria in making loans:

1. The case impact, projected relief and the size and symbolic value of the affected class;
2. Other litigation against respondent and the importance of the respondent in the community;
3. The effect of a successful result on other litigation;
4. Geographic impact; and
5. Need to establish litigation credibility against public employers.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20506

OFFICE OF
THE CHAIRMAN

JUL 1 5 1982

Honorable Orrin G. Hatch
Chairman
Committee on Labor and Human Resources
United States Senate
Washington, D. C. 20510

Dear Chairman Hatch:

During my appearance on June 15, 1982, before your Committee as part of its oversight hearings on the Equal Employment Opportunity Commission (EEOC), I promised to provide you within a month some additional information on certain topics. The following information, accompanied by the enclosed documents, respond to your requests.

Private Bar Loan Fund

I requested the General Counsel to again review the legal authority for EEOC to administer the Private Bar Loan Fund. The opinion, which is at Attachment A, indicates that there was a legal basis for the Fund. I was also informed during this review that there was a predecessor program to the Loan Fund dating back to 1971. The Commission's 1973 budget request, submitted in February 1972, indicates that $50,000 was allocated for Title VII legal assistance programs in 1971, $100,000 requested for 1972 and $250,000 for 1973. Justification for these expenditures stated that:

> "The major enforcement mechanism of Title VII is the ability of a private individual to bring a suit under Section 706(c) .... However, this mechanism is not achieving maximum impact. Not only is the percentage of 706(e) cases which result in a suit being filed low, but the percentage of cases successfully conciliated continues to drop. As pointed out by the Senate's Labor and Public Welfare Committee, the problems of discrimination in employment are so complicated that it takes great expertise to have a "technical perception that a problem exists in the first place, and that the system complained of is unlawful".

> However, such technical perception is lacking on the part of most lawyers. Consequently, contracts will be issued to train, through law schools and other professional channels, lawyers in 706(e) law and utilize pending 706(e) cases as a training tool".

Despite its history and legal basis, however, I wish to reiterate my position that I do not favor such a program and I can assure you that our only continuing role with the Loan Fund will be limited to collection of outstanding debts from prior year recipients. At Attachment B is a June 10, 1982, breakdown of the Fund's loan status.

Possible Year End Certification Violations

I also requested the General Counsel to conduct another review on the possibility of a violation of financial responsibilities laws when a former EEOC employee certified agency obligations to the Department of the Treasury. After studying the evidence, I directed the General Counsel to contact the Department of Justice on this matter for their consideration.

Travel Advances to Employees

Questions were raised during the hearing on outstanding travel advances that had not been repaid to EEOC by EEOC employees who were also officers of the employees' Union. The Commission's travel advance policy for Union employees is the same policy applicable to all other EEOC employees. The present policy provides for a continuing advance up to $1,000 for those employees who are in travel status for a large percentage of time. Normally, such advances are not liquidated until there is a change in employee status or the advance is no longer needed.

One Union official had a large travel advance which exceeded EEOC's operating guidelines and was noted by the General Accounting Office while it was conducting its audit of EEOC's financial systems. Since that time, the employee has been repaying his advance as part of our debt collection efforts for the Commission. We are also moving to improve the accountability for travel advances by employees so that future abuses do not occur.

Accounting Records

I am pleased to report that we have reconciled our accounting records through May and are now operating our accounting system on a current basis. A recent report from our Office of Audit confirms that we have improved the accounting system so that its accuracy is well within the acceptable tolerance range required of any government accounting system.

I appreciate your constructive support for our efforts to establish strong management controls within the Commission and fair equal employment opportunity policies in this country.

Sincerely,

Clarence Thomas
Chairman

Attachments (2)

Attachment A

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

JUL 13 1982

MEMORANDUM

TO: Clarence Thomas
Chairman

FROM: Michael J. Connolly M J Connolly
General Counsel

SUBJECT: Legality of Loan Fund Program

The question has arisen as to whether the now defunct Loan Fund Program was an activity in which the EEOC could legally engage. Additionally, the question has arisen as to whether any prior opinion this office issued on the legality of the Loan Fund Program is a reliable opinion. Thirdly, we have been asked to indicate whether any loans were made during 1981 under this program.

By memorandum dated July 18, 1978, this office, in connection with a legal sufficiency review of an "Invitation for Grant Application" for the administration of the loan fund, issued an opinion on the legality of the loan fund program. In this memorandum we examined the authority of EEOC to expend its appropriations for the funding of the program. We examined several statutes that relate to the purposes to which an agency may put its funds.

We first examined 31 U.S.C. §628 which states "except as otherwise provided by law, sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made and for no other." We also examined 41 U.S.C. §11 which states that "no contract or purchase on behalf of the United States shall be made, unless the same is authorized by law or is under an appropriation adequate to its fulfillment."

It, thus, became necessary to determine our authority in light of these provisions. For assistance in this area we looked to a Comptroller General Opinion as court case law in this area is quite sparse. We relied on 29 Comp. Gen. 419 (1950) which states in part that "where an appropriation is made for a particular object, by implication it confers authority to incur expenses which are necessary or proper or incident to the proper execution of the object unless there is another appropriation which makes more specific provision for such expenditures, or unless they are prohibited by law."

In light of the foregoing Comptroller General Decision the question became whether the loan fund program was an expense which was "necesaary or proper or incident to the proper execution of the object "enforcement of Title VII!" for which EEOC's appropriation was made. The EEOC 1978 appropriation was used to initiate the loan fund program. This appropriation allows funds "for the necessary expenses of the Equal Employment Opportunity Commission as authorized by Title VII of the Civil Rights Act of 1964, as amended...." P.L. 95-86, August 2, 1977. Relying on the Comptroller General Opinion and the absence of any prohibition against establishing the loan fund, we determined that the EEOC's general appropriation could be used to finance the loan fund program.

We discovered no principles or standards which provide guidance on what expenditures are reasonably necessary and proper with respect to the enforcement of Title VII. We have researched Comptroller General Decisions in this area, and they provide little guidance as to what constitutes a reasonable expenditure of an agency's appropriation. The provision in Title VII which comes closest to giving EEOC specific authority to establish a loan fund is Section 705 (g)(1) of Title VII. This provision states that the Commission "shall have power to cooperate with, and, with their consent utilize regional, State, local and other agencies, both public and private and individuals." A review of the Legislative History concerning section 705 (g)(1) was not helpful as it is quite limited. However, there are several provisions in Title VII and commentary in the Legislative History indicating the importance placed by Congress on an adequate private Title VII Bar.

In conclusion given the limited authority available for interpreting the "necessary or proper or incident" standard set forth in the Comptroller General Opinion cited above as applied to EEOC appropriations it is difficult to state with certainty the legality of the Loan Fund Program. However, we believe that the language in section 705(g)(1) authorizing the Commission to work with individuals in carrying out its mission and the importance placed by Congress on the private Title VII bar provide a legal basis for the Loan Fund Program.

Attachment B

BREAKDOWN OF LOAN STATUS BY PROJECT

1. Total number of loans	Atlanta	36
	Baltimore	51
	Chicago	37
	Dallas	77 *
2. Total amount of loans	Atlanta	$138,388.18
	Baltimore	236,874.72
	Chicago	213,500.00
	Dallas	230,301.38
3. Total amount of repaid loans	Atlanta	$ 9,209.28
	Baltimore	18,354.75
	Chicago	15,000.00
	Dallas	43,457.00
4. Total number of loans repaid**	Atlanta	3
	Baltimore	10
	Chicago	1
	Dallas	22
5. Total number of cases lost **	Atlanta	4
	Baltimore	6
	Chicago	4
	Dallas	7
6. Total amount unrecovered	Atlanta	$ 1,762.73
	Baltimore	10,704.43
	Chicago	17,918.00
	Dallas	9,200.00
7. Total number of outstanding cases	Atlanta	30
	Baltimore	38
	Chicago	32
	Dallas	48
8. Total amount still owed	Atlanta	$127,416.17
	Baltimore	207,815.54
	Chicago	180,562.00
	Dallas	177,638.80

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* Total number of loans for Dallas is 77. Two cases have been listed under four separate loans.

** Four loans have been listed in both the "Loans Repaid" category and under the "Cases Lost" category. In three cases, the plaintiffs have not prevailed in the case but have returned the unobligated portion of the loan. In one case, two of the plaintiffs lost their suit, but the third plaintiff obtained a favorable judgment and repaid her share of the loan.

BEST COPY AVAILABLE

GEORGETOWN UNIVERSITY LAW CENTER
WASHINGTON. D.C. 20001

ELEANOR HOLMES NORTON
PROFESSOR OF LAW

July 30, 1982

Senator Orrin G. Hatch, Chairman
Senate Labor & Human
Resources Committee
4230 Dirksen Bldg.
Washington, D.C. 20510

Dear Senator Hatch:

I appreciate the opportunity to include this letter in the official printed record of the June 1982 oversight hearing on EEOC before the Senate Labor and Human Resources Committee. I have no desire to involve myself in the affairs of the Commission or the Committee and would not ordinarily take the unusual step of formally submitting this letter, except for serious misapprehensions and errors of fact that apparently comprise the record of the hearing. However, since the record is now being prepared for printing, I have had to rely on the quoted statements and report of the hearing contained in the Daily Labor Report of June 15, 1982, (DLR No. 115, Bureau of National Affairs, hereinafter DLR).

Many statements made at the hearing indicate some lack of familiarity with EEOC operations and reforms, and perhaps reflect the lack of sufficient time that is so often necessarily the case in preparing for a hearing. Readers of reports of this hearing might well be led to believe that EEOC was actually harmed and set back during the last administration; yet every outside professional and Congressional evaluation of EEOC's new management initiatives, and feedback from charging party and business groups who use the Commission have uniformly acknowledged that this was the period of successful reform of Commission operations throughout. Indeed after hearings probing EEOC operations in the Senate and the House, Congress was sufficiently impressed with EEOC improvements in management and case processing that both houses voted overwhelmingly to transfer four major new statutory jurisdictions to EEOC from other agencies.

However, I do not write because of any expectation that you should necessarily take account of EEOC improvements during a prior administration but because a great many erroneous statements appear in the discussion of 1) overall Commission progress in correcting operational problems; 2) backlog identification and reduction; 3) the new case processing system called "Rapid Charge Processing" (RCP); 4) funding for private litigation to assist public interest lawyers willing to represent Title VII complainants who could not be represented by the Commission; 5) financial matters; and 6) management accountability. These areas will be discussed below.

During my tenure at EEOC (June 1977-February 1981) the Commission came under the most intensive scrutiny in its history, largely because of wholesale changes in its operations carried out after a long period of operational decline and because the transfer of four new statutory jurisdictions depended upon a substantial demonstration of improved operation and caseload management. Examination by objective evaluators and observers among them the responsible Senate and House Committees, the General Accounting Office (GAO), the Office of Management and Budget (OMB), and the Office of Personnel Management (OPM) uniformly found, documented, and reported that the Commission, as GAO characterized it, had made "many significant improvements in its procedures and practices since 1976 that increased its ability to attack employment discrimination" (GAO, HRD-81-29, 4/9/81 p. 5, hereinafter GAO, 4/9/81).

The April 9, 1981 GAO report is the central evaluation of the EEOC because it is the only comprehensive study of the Commission since 1976. Yet that report, along with several others, is cited in the hearing in a seriously distorted way as if it were a generally negative evaluation of the Commission. In fact the opposite is the case. Although this report performs the mandatory function of GAO reports, which is of course to detail areas GAO believes require improvement, the report is at pains to be balanced and uses language throughout to indicate the overall positive nature of its evaluation. Its most basic conclusion is formulated in the opening sentence of the Digest to the report: "The Equal Employment Opportunity Commission (EEOC) has taken steps to correct most of the problems pointed out in a 1976 GAO report." (Id. at p. i) Yet the opening statement of the June 1982 hearing went to lengths to lay out only the criticisms, creating the impression that these criticisms were the gravamen of the GAO evaluation of the Commission during the last administration. In fact GAO took just the opposite approach, positively laying out the "procedural and administrative changes that addressed many problems described in that [1976] report and improved [EEOC's] ability to deal with employment discrimination." (Id. at 6). After noting its 1976 documentation of "interrelated factors, including many management problems," GAO reported that:

> Specifically, changes EEOC has instituted include:
>
> —Establishing an Office of Policy Implementation to centralize and systematize new equal employment opportunity policy through guidelines, interpretations, and rulings.
>
> —Establishing a field office structure that consolidated all authority and responsibility for charge resolutions in the district offices. EEOC eliminated its five regional litigation centers and seven regional offices and established a district and area office structure that provides broader geographic coverage and makes EEOC more accessible.
>
> —Expanding EEOC's relationship with State and local government fair employment practices agencies through contracts for resolving charges and enhancing the agencies' abilities to resolve charges. EEOC adopted a uniform funding formula for resolving charges, tying it to the agencies' performance to provide an incentive for them to

increase charge resolutions.

--Training EEOC personnel and State and local government fair employment practices agencies' staffs to administer the new charge processing system. EEOC officials said 4,000 persons have completed the training program.

--Replacing the clerical staff with professional staff in the charge intake unit, which screens incoming complaints to eliminate those that are untimely and not within EEOC's jurisdiction.

--Locating EEOC attorneys in district offices to work with equal opportunity specialists when investigating charges and developing a single standard of evidence for deciding whether cause exists on a charge and for litigation. This avoids additional investigation when charges cannot be settled informally and need to be litigated.

--Establishing a separate charge processing system for resolving backlogged charges through negotiation, in which charging parties are contacted to identify active charges and settle them. EEOC reported that by using these procedures, the June 30, 1975, backlog of about 126,000 charges had been reduced about 56 percent, to about 55,000 charges, by September 30, 1979. EEOC planned to have the backlog cleared by the end of fiscal year 1982.

--Establishing a management accountability system which includes plans for on-line computer support to give field managers the capacity for constant program feedback on the status of the active workload and on the progress in meeting their program objectives. (Id. at 6-7)

This view of substantial improvements in Commission operations and management was corroborated by every evaluator who came into the agency to examine its operations. While space does not allow a detailing of all these evaluations reports from the OMB Office of Management Improvement and Evaluation and the OPM Workforce Effectiveness and Development Group should be mentioned.

The OMB issues a publication, Management Memo (Man. Memo 10/80) "distributed government-wide to officials with major management responsibilities" and has as one of its purposes "to disseminate information on federal management improvements of government-wide interest and applicability." (Id. at 1) The October 1980 Management Memo featured two agencies in an article entitled "Management Successes and Improvements--Two Case Examples." (Id.) One of these was the EEOC. The report suggested that, "The EEOC experience should be of special interest to other agencies with responsibilities for investigating complaints from the public and those that require timely and accurate reporting on operational progress from extensive networks of field offices." (Id.) It reported that, "Success has been achieved by changes in: (1) processing methods, (2) organization, and

(3) communications between headquarters and field offices" (*Id.*) Further details of these conclusions are reported below.

The OPM evaluation of EEOC is entitled *Management Initiatives and EEOC's Improved Productivity*, OPM Case Management Information Series, Report No. 1 Jan. 1981 (OPM Rept. No. 1). It was authored by Lewis W. Taylor and L.S. Tao of the OPM. Workforce Effectiveness and Development Groups set up to carry out OPM responsibilities to federal agencies under the Civil Service Reform Act of 1978. Among its goals are: "(1) To review the procedures and practices of various Federal programs in the areas of case management, financial management and personnel management," and" 2) To identify good practices in these federal programs and publish reports about exemplary practices." (*Id.* at 1) At the time of its evaluation of EEOC, OPM had "reviewed more than 50 Federal programs and some State agencies in the area of case management, as well as 10 U.S. attorneys offices . . . in their debt collection activities." (*Id.* n.2). The January 1981 OPM publication was "a report about what EEOC has accomplished and an analysis of the reasons for its success." After reviewing "productivity trends," "management initiatives," and "quality assurance," OPM found that "The Commission has made remarkable progress." (*Id.* at p. 13) The details of its findings are discussed below.

Backlog identification and reduction. At the time we came to the Commission in June 1977, the EEOC was known chiefly for its backlog, which had reached crisis proportions. The most serious concern of the Congress and of the charging party and business public who used the Commission was in backlog reduction. Not only was the backlog large with totals estimated as high as 130,000 cases, but EEOC's method of counting backlog obscured any true assessment of old charges by making the fundamental error of counting as "backlog" the entire case inventory, whether the cases were a few days old or a few years old. In his testimony before your Committee the new chairmen of the Commission, Clarence Thomas, reverted to this error and in the process opened the way for the serious and erroneous charge of prior "'bogus' backlog figures." (Senator Nickles DLR, p. A-4) Beyond our own standards of integrity, which demanded the most open and honest appraisal of progress we could give, we were under such intensive scrutiny and reported to various authorities so often that the manipulation of figures would have been foolish and would have been easily detected. Yet Mr. Thomas claimed that when he arrived at the agency 16 months into a new administration he was led to believe that the backlog had been decreased from 69,000 charges in January 1979 to 14,000 by March 1982 but that in fact there was a separate "frontlog" of newer charges, making for a total of 45,000 cases. It may be that because Mr. Thomas was new to the agency and was called to prepare testimony so early in his tenure he had had insufficient time to fully familiarize himself with the available materials and with announced and well-known Commission practices for counting and identifying case workload. The separation of older cases to be processed through the backlog charge processing system from newer cases to be processed through RCP was among the most publicized and best known practices at EEOC, *enabling it to keep the separate count that alone can indicate whether the new systems are building backlogs as the old systems had*. Thus EEOC announced to the public that it was separating out all charges that had come into the Commission as of January 1, 1979, for the purpose of allowing a separate staff in each district office to work on the reduction of old charges separate from new charges that were to be handled in an entirely different way, using the factfinding conference as the primary investigative tool. Thereafter EEOC always reported its charges in precise detail, including not only a countdown of the backlog but very specific information on the number of newer charges as well.

Every two months the EEOC issued a "Recurring Data Analysis Chart." This chart was made available to Congressional committees and members of the public, in addition to the regular press releases on EEOC caseload. The chart reported EEOC charges broken down by virtually every relevant category both agency-wide and in every district office, including the age and number of all of current charges, i.e. those going through RCP. Thus any slow pace in reducing backlog or build-up of newer cases in individual offices could not be obscured by overall agency progress in caseload reduction. This bimonthly chart reported new receipts for the prior two months as well as total receipts. It reported not only Title VII charge receipts but charges received under the Age Discrimination in Employment Act and the Equal Pay Act and charges brought under a combination of various EEOC jurisdictions (e.g. Title VII/Age) both new charges and total inventory. It reported "Total Closures" and then broke them down by "New Charges" and "Backlog Charges." It reported separately on "Backlog Reduction" broken down by "Charges Pending as of" the beginning of each reporting period and by "Charges Closed" during that period, and then gave the percent "Backlog Reduction," again in each office as well as agency-wide, as with all figures and categories reported. It further reported people benefited, dollar benefits in several different categories, closures by each statute and closures by each type and unit, among them Backlog and RCP. Backlog and RCP (among other categories) were further divided for separate inspection as to "Closures by Type and Unit," "Negotiated Settlement," "No Cause and No Violation," successful and unsuccessful conciliations, "Withdrawals . . ." "Failure to Cooperate . . .," and "No Jurisdiction."

The most important case data the Commission makes available—the actual age of charges in RCP—was not mentioned by Mr. Thomas in his testimony. Yet this is the key figure for determining whether there is a new backlog forming consisting of newer charges. Instead Mr. Thomas chose to use the pejorative term "frontlog" as some kind of analogue to backlog. Not only does this term not tell us the age of the cases referred to but its clear implication that most of these cases too are old cases is erroneous. Actually Mr. Thomas' combined figure is really the entire inventory of cases, many of which would be a few weeks old and most of which could not be considered old at all. For the period between 10/1/81 and 3/31/82, EEOC reported that the average charge in RCP was 166 days or less than six months old. This is longer than in the past but still very good time for processing cases as inherently complicated as Title VII cases and the other jurisdictions under EEOC. Commission staff deserve praise for such a record in the face of staff and budget reductions. And apparently this progress has been consistent during the new administration. On May 1, 1981 the acting chairman of the EEOC reported that "139 charges were completed for every 100 charges filed with the Commission," and since backlog occurs when an agency resolves *fewer* cases than it receives there was no backlog formation at that time. (EEOC Release, "EEOC's Production Rate Increases," 5/1/81) Even Mr. Thomas' 45,000 combined figure, reduced by the 14,000 remaining backlog he reported, would leave EEOC with only 31,000 newer cases. If EEOC is continuing to receive close to 60,000 cases a year and Mr. Thomas' figures are mid-year figures, then it appears that EEOC will dispose of at least as many cases as it takes in. If so, then there would not be backlog accumulation and certainly not the "nagging backlog" Mr. Thomas reported. (DLR p. E-3)

Never before Mr. Thomas' testimony have I seen an indication of confusion between the RCP or current caseload and the old backlog. The GAO listed among the changes at EEOC it approved "[e]stablishing a separate charge processing system for resolving backlogged charges," reported a 56% reduction in these charges by September 30, 1979, and took separate note of current charges, where GAO found "no unmanageable accumulation" but some potential for such accumulation in Baltimore and Dallas. (GAO, 4/9/81, pp. 7, 8) The way EEOC avoided such build-ups was the very opposite of that suggested by Mr. Thomas in his testimony when he lumped together pre-1979 charges with newer charges processed by different and more expedited techniques. Separating the two categories of charges did not keep EEOC from counting and reporting both; but it did enabled the agency to keep a focus on the steady elimination of the oldest charges while pinpointing any accumulations in more current charges and directing resources accordingly.

For years EEOC suffered the poor reputation that attended ever increasing backlog accumulation. An inspection of the data available to the public at the Commission indicates that the successful backlog elimination begun during the last administration appears to have continued into the new administration.

Rapid Charge Processing System. The GAO found that, "Perhaps EEOC's most important change since 1976 was the introduction of the 'rapid charge process' to resolve new individual charges." (GAO, 4/9/81, p. 8). It reported that "EEOC's rapid charge process has greatly improved the processing and resolution of individual charges." (*Id*. at 9) GAO said that "EEOC's success in getting settlements through the rapid charge process was demonstrated during the first 8 months that the process was in use in all offices" and compared the 50% rate of negotiated settlements achieved to the 11% settlement rate GAO had reported in its last major report on the EEOC in 1976. (*Id*. at 8, 9) In addition, a 150% increase in the average monetary benefit from $1400 under the old procedure to $3400 under RCP was reported. (*Id*. at 9)

Despite its approval both of RCP and of the RCP emphasis on settlement, GAO believed that settlement should not be attempted in cases where there was accumulating evidence of no cause. The flaw in this reasoning is that it inevitably involves prejudging a case without the statutorily required investigation. Ironically GAO had just the opposite criticism of EEOC's settlement efforts when it looked at EEOC operations in 1976. Then GAO complained that the "negotiated settlement rate was below the minimum acceptable level established by Congress" and found that in 1974 "individual complainants had a probability of about 1 in 33 of having a successful resolution negotiated." (GAO, HRD-76-147, 9/28/76, p. 13)[1] At the hearing questions were raised concerning alleged "unwarranted Title VII charges . . . sometimes settled in return for 'clean' work records and neutral references." (DLR, p. A-4)

The Committee's concern about this matter is understandable since it raises an issue about which there may be some confusion and because the GAO found little else in the EEOC reforms to criticize.[2] But criticism of settlement neglects two essential considerations. First, settlement of as many cases as possible is the only alternative to costly and time-consuming investigation, which in a high-volume complaint process inevitably yields unconscionable delays and backlogs that severely frustrate the respective goals of employers and charging parties alike. Second, settlement of weak and seemingly meritless cases to avoid the costs and burden of prolonged processes and litigation is a well recognized component of an open legal system and is the rule in other areas of law; special rules disallowing it cannot be constructed for this area of law alone.

The crux of the concern appears to be that remedies for settlement be available only in deserving cases. The probability of remedy even in weak cases in a settlement oriented system leads to the criticism that remedies are produced in undeserving cases. This of course is the central dilemma of our legal system and of any open legal system that allows anyone who feels aggrieved to file.[3] The respondent is within his full rights to stand his ground until the process works its full course. But whether in the courts or in administrative processes, this alternative is so costly and time-consuming that it is rarely chosen.

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[1] In 1976 GAO also found an unusually high administrative closure rate of 61% and reported that, "most charges are closed administratively without EEOC enforcement action" of any kind. (*Id*. at pp. 10, 11)

[2] The title of the 1981 comprehensive GAO report, *Further Improvements Needed in EEOC Enforcement Activities*, was noted at the hearing. However the cover that bears that title explains: "In 1976 GAO reported that the Equal Employment Opportunity Commission's management problems were thwarting its enforcement activities. Since the report, the EEOC has made many changes to correct its problems in handling individual charges of employment discrimination filed with it and in developing and investigating self-initiated charges." The cover then lists its suggestion that charges without reasonable cause not be settled. Notably its other two recommendations are to give EEOC additional authority and are addressed to Congress--to give EEOC authority to sue state and local governments, now the exclusive power of the Department of Justice--and to the Executive--to consolidate the equal employment responsibilities of the EEOC and the Department of Labor.

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It certainly would be chosen if it were possible to close cases on the merits before all the evidence is amassed--which is what the GAO assumed. But this is not possible in American adjudication systems. To avoid the dilemma inherent in either settling or investigating weak cases, the GAO suggested that, "when EEOC develops information, either before or during the fact finding conference, showing that a charge appears to lack reasonable cause, EEOC should either advise the changing party to withdraw it, or close it as no cause." (Emphasis added) (*Id.* at 15) But making a decision on the merits before the appropriate investigation--either by advising withdrawal because the complaint seems to lack merit or by finding no cause--would appear to directly contravene Title VII. The statute consistently ties a decision on the merits of charges to an investigation. For example, Title VII requires the Commission to "dismiss the charge . . . [i]f the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true . . ." (Emphasis added) (See generally Sec. 706(a)) Nor may the statutory investigation be short-circuited in the case of even the weakest charges. Because Title VII bars unequal treatment, even the most blameworthy conduct by an employee may not be legitimate cause for employer action if similar treatment has not been accorded employees of a different statutory classification. Thus the Commission may not prejudge the outcome of cases even in the face of accumulating evidence adverse to the complainant.[4] Short of a

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[3] This is especially so in a cost-free administrative process that does not have filing or other costs, as courts do. One of the most important improvements at EEOC was the introduction of a new intake system, replacing clerks with trained investigators whose professional and human relations skills enable them to screen out the large number of frivolous and non-jurisdictional complaints that formerly entered the system. Although this resulted in a significant drop in complaints of about 20%, it leaves many complaints which cannot be rejected by the Commission in conformance with the applicable statutes.

[4] GAO noted that EEOC closes cases for no cause after fact finding (*Id.* at 27), presumably to make the point that a fuller investigation is not always necessary in order to find reasonable cause. It is certainly true that no cause may be found in a fair number of cases if the information disclosed and the books and records which the employer brings with him conclusively establish that employees of other backgrounds have been treated the same. Moreover some complaints may be dismissed for no cause before or during the fact-finding conference with very little investigation

(Footnote continued)

settlement, it must await the result of an investigation of the employer's treatment of other employees in the company or appropriate subdivision.[5]

Another very important reason employers ultimately decide to settle even weak charges has not been reported. A settlement offers finality to an action, obviating the problem of meeting the same case in court after no cause is found. This problem has plagued employers throughout the life of Title VII. Moreover it was not uncommon for complainants to prevail in court actions after EEOC had found no cause.[6] Quite apart from the ultimate success or failure of

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[4](continued)
or involvement of the employer on the basis of self contradictory information provided by the complainant or conclusive and non-rebuttable information provided by the employer.

[5] Respondents told the GAO "it was cheaper for them to bow to EEOC pressure and pay charging parties 'token' or 'nuisance' fees of $50 and $100 to settle charges, rather than to be involved in lengthy and costly formal investigations" and "characterized these settlements as the lesser of two evils" (_Id_. at 17). In many instances, such small settlements may be the least burdensome alternative, but if so, this is inherent in the investigatory process and the available alternatives in our legal system. For the Commission may not find no cause without requesting sufficient comparable data to eliminate unequal treatment even in a case of clearly unacceptable behavior, and in many instances interview of witnesses may be required. Supervisory reviews and review by the district director are also necessary to validate formal findings of the Commission. The frustration an employer feels in settling a case which seems genuinely weak or without foundation is quite understandable, but the dilemma of continuing the investigation or settling the charge is the creation of our system of law and the applicable statutes, not the EEOC. Respondents are accustomed to this dilemma in legal actions of a much more substantial nature in other areas of law, such as contracts or torts, where a business judgment to settle cases is often made in order to avoid the costs of litigation in cases where employers believe they would otherwise prevail at trial. And of course respondents often decide not to settle such cases, as did approximately 50% at EEOC in 1981.

[6] I know of no studies that indicate the reasons that court actions sometimes succeed after a no cause administrative finding. However anyone familiar with legal processes is aware that different fact-finders often make different

(Footnote continued)

court action, there may be no greater frustration than simply having to defend a weak charge where no cause has been found administratively. The likelihood of settlement in such cases in court is at least as great as at EEOC, except that at the litigation stage the costs are considerably higher and some amount for counsel fees is always included.

Employers are aware of these dilemmas and risks. This may account for the high level of satisfaction with RCP which GAO found among respondents. GAO reported that, "Most respondents replying to our questionnaire were satisfied with the way EEOC resolved the charges against them" (Id. at 16). At least 69% of employers expressed satisfaction with important aspects of fact-finding as compared with something less than 50% of the complainants benefitted. (Id. at 16, 17). GAO believed that this difference resulted because the very process of negotiation convinced complainants that their complaint was worthy and that they were disappointed when their weak charges received weak remedies. This too is understandable, but the alternative of an unsuccessful resolution following a longer and more costly investigation can hardly be more satisfactory to either party.[7]

The very high satisfaction level of almost 70% which GAO found among respondent employers--who are after all the objects of charges--is perhaps the best comment on the settlement question. Employers and their representatives have not hesitated to let their views be known. The New York Times reported the opinion of one employer representative:

> 'Employers feel the EEOC's method of handling charges has improved its relationship with them. Now it is one of working out problems together rather than one of being adversaries,' said a spokesman for the Equal Employment Advisory Council, which represents major companies and trade associations and frequently files court briefs on behalf of employers charged with discrimination. (New York Times, Sat. Feb. 24, 1979)

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[6] (continued) judgments. Perhaps even more likely, depositions may uncover problems that are systemic or class-wide in potential, while an administrative process geared to the individual's complaint may not.

[7] GAO found greater complainant satisfaction with settlements under the old procedures in 1976 as contrasted with greater respondent satisfaction in its 1981 report. This may have resulted from EEOC's policy under the old procedures of seldom attempting negotiated settlements and then often only in stronger cases where complainants had a good chance of prevailing.

It is employers who are put to the expense and trouble of providing remedies. Employers have access to counsel and make judgments in their own interest; half the time or in 50% of the cases they chose not to settle. Employers ultimately make bottom-line business judgments of whether to put resources into legal processes, and often there are good business reasons to do so,or into settlements.

Edward W. Miller, a former Chairman of the NLRB, where the emphasis on settlement has always been very great, has commented on the introduction of a strong settlement orientation at EEOC:

> We need look only to the early years of the Equal Employment Opportunity Commission to see the results of a long continuing failure to recognize the need for serious settlement attempts. That agency's backlog of cases continued to mount for years, while charging parties went without relief and respondents were harassed by having to try to find facts dealing with actions which were years old by the time the EEOC investigation began in earnest. Any lawyer practicing in the labor field knows that it was virtually impossible until the chairmanship of Eleanor Norton to reach a settlement within any reasonable time with the EEOC. The result was administrative chaos, harassment of respondents, and dissatisfaction of charging parties. The total result was a failure to implement the law. (Edward B. Miller, *An Administrative Appraisal of the NLRB* pp. 18-19 revised edition 1980, Industrial Research Unit, The Wharton School)

Funding for Private Litigation. According to the DLR report of the hearing, considerable time was spent questioning the propriety of loans or grants to non-profit public interest lawyers and organizations to conduct litigation. Although EEOC's several general counsels have consistently advised over the years that there is implied authority to award such grants and loans, the GAO apparently regarded all such funding as "questionable" because possibly outside Commission authority, inasmuch as no specific mention of them is made in the statute and because they subsidize private litigation. (GAO AFMD-82-72, 5/57/82, pp. 29-31)

But Congress was fully aware of private bar funding, which was consistently included in the Commission's budgets. Indeed, the House Appropriations Committee showed a special interest in the benefits to the public by submitting specific questions concerning the program after the EEOC appropriations hearings for FY 1980 on March 19, 1979. By letter of March 27, 1979 the EEOC Office of Congressional Affairs transmitted the following answers to the Committee's questions:

ASSISTANCE TO LITIGATION BY OTHERS

Question 1. What EEOC resources are devoted to the various activities that support litigation initiated by others?

Answer: The Commission's technical assistance devoted to supporting litigation initiated by others is its Private Bar Program. The Commission's private bar program is handled by the Office of Special Projects and Programs. Approximately $800,000 was devoted to this activity in 1978 and again in 1979.

Additionally, the Commission's Office of General Counsel provides indirect assistance in private Title VII cases through formal participation as amicus curiae and intervention.

Question 2. What benefits have been obtained from these activities?

Answer: The Commission's activities and limited funding in these areas have resulted in substantial numbers of cases being tried by private litigants, where the Commission, because of resource limitations, could not have hoped to litigate at government expense. An example is the Lawyers Committee for Civil Rights Under Law, which has received Commission funding to help defray the cost of litigating cases that were first filed with the Commission, has accepted a total of 528 cases for litigation and referral. From this effort a panel of 120 attorneys has, during the five years of the operation, recovered $1.5 million in back pay through court awards and settlements. An additional $4 million in back pay has been awarded, pending outcome of appeals. The dollar amounts do not reflect the importance of the issues of law thus resolved. Our very modest support of the private bar produces substantial returns in resolving Title VII cases.

At the hearing, the Committee also questioned a revolving loan fund once used as a test demonstration project to finance Title VII litigation in cases where the Commission issued right-to-sue letters but where government initiated litigation was not possible. This effort was characterized pejoratively as "front money" for "political organizations," and the funding of groups whose mission in bringing equal employment cases is consistent with the Commission's was compared to government funding of "groups interested in segregation." (DLR, pp. A-2, A-3) One reading this account would be led to believe this funding was an aberration or worse that began in the last administration and that it was somehow directed to groups on a preferential basis for inappropriate purposes. Actually our administration inherited a loosely structured program of outright grants to public interest groups, civil rights lawyers and law schools[8] which was apparently begun during the Nixon administration in the early 1970's (although I know of no evidence that the program had any partisan aspects), had continued unbroken, had been explicitly

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reported to Congress in the testimony of Commission officials,[9] and appeared regularly in Commission budgets for which successive congresses had appropriated funds. This record casts considerable doubt on the GAO opinion, which lacks documentation in its report.

In any case, my own preference was to use such funds for improving the Commission's own litigation, but many of the same conditions that produced the private bar program in prior administrations persisted and had become even more serious. For many years, the Commission had been concerned about the many complaints from the public that its right-to-sue letters were often a nullity for lack of lawyers who would handle such cases. This situation, which was a major factor in the development of the program over the years, had worsened as the number of lawyers willing to take discrimination cases has declined in many areas because of the increasing cost of discrimination litigation and especially of outside experts needed to produce credible evidence in discrimination cases. The concerted and systematic elimination of the backlog with the resulting large increase in right-to-sue letters had only accentuated this problem.

However I believed the program needed tightening if it was to continue at all. For the first time, we required that funding be awarded on a competitive basis just as we introduced competitive bidding for all outside contracting done by the Commission. Previously private bar funds were simply awarded to specific groups who themselves came forward or were known to the Commission.

Moreover, as GAO noted, this was not a permanent program but consisted of

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[8] Most of the funds to such outside organizations during our tenure went for the drafting of materials to be used by the Commission and by civil rights lawyers and for technical assistance to such lawyers, not for funding litigation as such.

[9] For example at an oversight hearing on July 30, 1979, my written testimony stated:

> 6. Funding of Private Groups to do Attorney Training and Technical Assistance. Following an open competition and public bidding, the Commission has established contractual relationships with public interest law groups to administer five training and technical assistance programs for private attorneys who represent Title VII complainants, and three revolving loan programs to assist the private bar in initiating Title VII cases. (Emphasis added) (Hearing before the Subcommittee on Employment Opportunities of the Committee on Education and Labor, House of Representatives, 96th Cong., 1st sess., Washington, D.C., July 12 and 30, 1979.)

"agreements with non-profit organizations. . . to test the possibility of developing a loan fund program for private attorneys having cases alleging unlawful employment practices" and was "intended to be used by the non-profit organizations until they established a permanent loan fund program with money from sources other than EEOC." (GAO, 5/17/82, pp. 29, 30)

The revolving loan fund test program was a good faith effort to conserve government funds undertaken after legal counsel had in good faith advised that it was legally appropriate. Unlike its predecessor program under prior administrations, the loan program allowed for the recovery of at least some of the government funds, which could then be reused. Staff recommended this idea to the Commission based on a precedent from HUD. The Commission proceeded only after the Office of General Counsel researched the question, at my request, and issued an opinion that the loan fund was appropriate under the statute. Later OMB raised concerns about loan funds for technical budgetary reasons and the program was discontinued. But neither OMB nor the Congress ever raised questions about outright grants to civil rights groups to conduct Title VII litigation, as this Committee did at the hearing. To the contrary, the program was sanctioned through appropriations from Congress for funding private litigation under Title VII as indicated in EEOC budgets, regular reporting by the Commission to Congress, and the consistent interest shown in this program by Congress itself.

Financial Matters. The GAO report of financial management problems (GAO, AFMD-82-72, 5/17/82) relates to details of financial practices that were never brought to my attention and with which federal agency heads would almost never be familiar. Indeed the installation during my tenure of an entirely new and computerized financial system, itself an important agency achievement, led me to believe that the financial problems that the agency had had in the past were under control. Nevertheless as the agency head during at least part of the period in question, I have undertaken to obtain information from the appropriate agency staff at the time in order to be able to comment on the report.

At the outset, I must express deep concern that the GAO staff involved in writing this report apparently departed from the customary GAO practice of interviewing all the relevant and appropriate staff involved before drawing conclusions and writing a report. This practice, always followed by GAO staff from other divisions of GAO while I was at the Commission, is obviously necessary not only to assure fairness and objectivity but simply to be able to evaluate information and divergent accounts of the causes of operational problems.

In the case of this report, GAO's decision to include in its interviews the supervisory staff directly related to the problem areas but not their supervisors--the responsible financial managers involved--raises very serious questions. These questions are compounded by the fact that the GAO relied in part on staff members whom they knew had been disciplined and against whom they knew discipline was pending for their handling of many of the very matters discussed in the report. What conceivable appropriate motivation could there be for failing to interview the management staff charged with the basic responsibility under investigation, especially under circumstances of known personnel problems in the units involved? Even if the GAO staff involved had later concluded that reason existed to discount or discredit information from such staff, its own conclusions would have been stronger and more credible for having obtained the views of this staff. As it stands, the report is flawed. It is clear that the report would have been more objective and more useful had information been taken from all the appropriate staff, as I will try to illustrate below. The manner in which this review was conducted raises such serious questions for an agency where objectivity and appearance of objectivity must be beyond reproach that I am writing directly to the Comptroller General to express my concern, am sending him a copy of this letter, and am asking him to take whatever corrective action is necessary to ensure that such practices for gathering information are not used in the future.

In 1977 EEOC proceeded on financial problems as it did on other problems in the agency--1) systematically to avoid piecemeal solutions by facing the lack of agency wide systems that were at the core of the Commission's problems in virtually every area; and 2) by drawing priorities because of the immense task inherent in revising the entire management of a federal agency. Thus, just as new and separate case processing systems were installed, a Management Accountability System was developed (see discussion below) which tied mission accomplishment with budget and resource control so that managers were required (and evaluated on their ability) to meet performance goals within resource limitations.

The priority attached to developing the Management Accountability System was directly relevant to establishing fund control. This was important to prevent a violation of the Anti-Deficiency Act, as had occured in the prior administration. The books and accounting practices in existence at the time of the over-obligation were so faulty that paper trails and other documentations were often non-existent and reconstruction of many records was impossible. It is important to bear in mind that when we came to EEOC there were no accounts in the standard sense. What was required was basic: the establishment of accounts, the opening of books, in short the initiation of the basic mechanics of an accounting system. It was clear that this would require a herculean effort that needed the support of expert and cooperative staff, and that even then, many of the books and records of the agency could never be reconstructed because the documentation was non-existent or lost.

Given the unusually severe accounting problems in the agency, financial management staff gave priority attention to preventing another over-obligation. This could not be done entirely through normal accounting procedures because these had to be formulated and institutionalized. Thus, preventing over-obligation required fund control by financial management staff themselves through the Management Accountability System, pending the arduous task of creating sound accounting practices. Contrary to GAO implications, the managers involved gave a great deal of time and attention to fund control and were held fully accountable by specific performance indicators in their management plans. In fact despite the difficulties experienced in improving accounting practices, no over-obligation occurred, as GAO noted. This was because the performance goals of the managers involved included the preparation of monthly status-of-appropriations reports and other budgetary analyses. These reports detailed the financial status of various appropriations and prevented over obligation.

Meanwhile, it was necessary to begin to create an accounting system, including monthly ledgers and the like, while the same staff was involved in the management, budget, and financial aspects of putting in place three new case processing systems, a massive headquarters and field reorganization of the entire agency, an agency-wide management system, a new field structure, an objective system for choosing a new complement of field managers, and over 1200 new staff. To begin the process of systematizing financial matters, staff had to find a way to computerize the accounting system. Before our administration the Commission had been alerted to the need to computerize its records by the over-obligation problem. But as of the time we arrived, the development of computer capability was languishing for lack of in-house capability. Therefore EEOC contracted with an outside vendor and the computerized system was installed. GAO noted that this system appeared to be effectively designed to control funds. Actually there was regular and thorough going contact between EEOC and GAO as the system was installed.

The GAO found, however, that staff failed to maintain and operate the system properly. This is the essential root of the problem of financial accountability as identified by GAO.

Yet GAO makes no mention of the reasons the system was not being operated properly, although it was informed of severe personnel problems in the applicable units predating both our administration and the old over-obligation problems; and GAO was informed of vigorous attempts by the financial management staff to deal with these problems within civil service regulations. Particularly in light of the GAO finding that the system was not being operated properly the omission even of mention of severe personnel problems which management was pursuing is inexplicable. If the point was to isolate the causes of continuing problems, to evaluate management's response and initiatives, and to suggest the relevant corrective action, the personnel factor that lay at the root of the problem could not be omitted. I do not suggest that GAO should have involved itself in the details of personnel problems, but in light of its own finding of improper operation, it seems clear that the issue could not properly be avoided.

Beyond this, the omission of any mention of personnel factors in the report cannot be excused, particularly because GAO chose to interview and rely on information provided by employees being disciplined for failures associated with the GAO findings. It followed that GAO was obligated to at least speak also with the management staff involved. Here I do not suggest that GAO should have tried to evaluate the underlying personnel problems. What I do suggest is that as to the issues involved in the report, it was wrong to exclude the responsible management staff while relying in part on the staff they were disciplining in an attempt to correct the problems GAO cited.

The financial management staff had found the key staff upon whom they had to rely--the responsible supervisory employees in the unit--to be unresponsive to training and to attempts to get them to operate the new financial systems properly and that this staff was unequal to the large task of creating sound records in a timely fashion. But management staff did not simply decide to live with these problems, as is so often the case with federal managers. Instead they challenged the employees involved to produce as expected and initiated the applicable disciplinary proceedings when those efforts failed; in turn, as so often occurs, they were themselves challenged over and over again in the grievance processes available to federal employees. Many hours of management time were spent trying to resolve these problems through the applicable disciplinary proceedings, action staff believed was the only responsible course for turning the system around permanently. The difficulty involved in removing even the most culpable federal employees is too well known to require discussion here. Nevertheless, staff sought to remove the accounting officer. The time involved in collecting documentation and in the proceedings themselves was of such a duration that the agency decision was not rendered until after the change of administration and after I had left the agency. For reasons unknown to me, the accounting officer was moved to the Office of Audit, rather than removed, as the staff had originally sought. Other supervisors had been subject to suspension or been involved in a series of grievances all the while that management was trying to improve staff performance throughout the unit.

I do not suggest that the managers involved or that top management are absolved of responsibility even when there are endemic and longstanding personnel barriers to the achievement of agency objectives. I do maintain, however, that failure to note first the existence of problems strongly related to GAO findings, then, what actions had been taken to deal with them, and finally, if appropriate, what further actions might be needed was a disservice to the agency and especially to the new administration. Since the attention of the new administrators had been called only to operational problems, they lacked guidance from the report, even in general terms, to know that corrective action in the personnel area might be needed.

Finally it is impossible for someone as far removed as I was from the level of fine detail involved in the GAO report to comment fully. I do not of course have access to the applicable documents, nor to comprehensive written responses from the staff that had responsibility for financial matters. Nevertheless I have spoken with some of the staff involved and received some written information from them. I think it would be useful to comment on a few of the significant issues raised where detailed records may not be essential in order to respond.

In October 1979 EEOC established the first fund control reconciliation system the agency ever had.[10] However with a massive field reorganization and many new employees in the field who had never had financial responsibility before, it would have taken more than the year or so involved when GAO came into the agency for the system to be fully operational. This was especially

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the case given the nature of the task--literally to construct and reconstruct agency financial records for the first time and to train and accustom many new field employees to new accounting procedures all the while there were severe personnel difficulties in key headquarters positions that would necessarily take time to correct under civil service regulations.

Thus the financial management staff involved felt forced into what amounted to a trade off--to either produce timely reports or wait for montns to correct the error rate. It was clear that staff problems prevented both from occurring at the same time. Management staff chose to attempt timely reports so that the Commission would know the status of the sums in the appropriation and thus avoid any possibility of over-obligation.

I asked the staff involved about whether consideration had been given to hiring additional staff. Clearly financial management staff was strained by the rapid growth of the agency--a 50% increase, including 700 new Title VII positions and 500 positions transferred with the new jurisdictions. None of the Title VII positions were assigned to the financial office, because OMB, following congressional concern that staff be used on the direct workload problems of the agency, indicated that the new positions were to be used in the field. And of the 500 positions transferred with the new jurisdictions only 11 were designated by transferring agencies as support positions and only 2 as financial management positions. When these positions became vacant, they were used to fill an urgent need in the age enforcement staff, where complaints doubled in the first year at EEOC. However, temporary staff was hired to work on a task force basis. Unfortunately, because of continuing personnel problems with permanent staff, cooperation between the temporary and permanent staff could not be achieved. Still management staff did not give up on trying to correct the staff problems they had identified among permanent staff. But these could not be cleared up fast enough to have the necessary operational effect.

This can be seen, for example, in the huge increase in rejected error transactions (from 360 to 4130) noted by GAO that began at the time of the change in administration and continued until July 1981. Staff indicates it lost the authority to get the required work produced even as well as before during this period when the disciplinary action for removal was being processed and especially after transfer rather than removal resulted in one case. GAO wrongly implies that the increase in the error rate was partly a result of a management decision to shift coding responsibilities to field officers on

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10 GAO leaves the impression that the financial management staff was responsible for about $377 million during the last three fiscal years. (Id. at 1) But actual management of a much smaller amount was involved--under $25 million--because 80% of the agency's budget goes for mandatory and nondiscretionary costs payable by GSA (salaries, rent, etc.).

October 1, 1979. This could not have been the cause inasmuch as the shifts occurred over a year before the number of rejected transactions began to grow precipitously.

Finally at the hearing a point was made of the possibility of legally improper action by a member of the financial management staff. Since he was never interviewed by GAO it seems only fair to indicate his view of the transaction. While GAO notes that several million dollars in manual adjustments were made in preparing year-end financial reports for fiscal years 1980 and 1981, the only specifics that were provided were for 1981 after I left the Commission. As to that, GAO raises the possibility of a wrongful act by a staff person who certified a year-end report that were incorrect. GAO talked to subordinates about this matter, but never spoke to the person involved. When I inquired of him concerning the circumstances I learned that the staff member was trying to conform to Treasury regulations regarding timliness, believed he should report known obligations, and understood that the sign-off figure could be adjusted later, in accordance with normal government practice. Apparently Treasury regulations require that year-end reports be submitted by October 20 (with 2-3 weeks leeway). The staff member believed it was important to get the information to OMB in a timely fashion because it is necessary for the President's budget. Since some unreported obligations necessarily come in after an agency closes its books, unreported obligations for prior fiscal years are reported on a monthly basis in the agency's budget execution report. The amount involved here represented late billing (at the end of the fiscal year) in additional charges by GSA and the Post Office for rent, phones, and postage. Rather than submit a report that did not reflect these known obligations, the staff person submitted a "miscellaneous obligating document." The staff member believes he followed common and authorized government practice. In any case, it seems clear that he acted in good faith and not venally as implied at the hearing.

Despite strong and energetic efforts by an able and determined financial management team some of EEOC's longstanding, intractable accounting problems remained and continue today. They cannot be resolved if evaluators engage in a steady avoidance of one of the most important aspects of the problem.

Management Accountability. The EEOC's dramatic reduction in backlog and time to process charges was not alone the result of new and streamlined case processing systems and techniques. For the new systems to yield results, a rigorous system of management accountability had to be built from the ground up. The Management Accountability System (MAS) was established and management plans were set up for each headquarters and field office. MAS is a "design for relating all of the components of good management" and is "based on . . . two essential management principles," namely management goals or objectives and manager accountability. (EEOC FY '80/81 Management Plan/Budget Guidance). Management Plans contained both qualitative and quantitative performance goals for all the critical elements of the work of the office and were incorporated into each manager's performance appraisal so that he or she could be held accountable and appraised accordingly. In its study, Management Initiatives and EEOC's Improved Productivity, OPM described EEOC's management plans and their relationship to the improvements OPM found in case processing at the Commission:

> The management plan is built around three major elements, i.e., performance indicators, management improvement projects, and a statement of critical issues. The plan is divided into ten program units (such as intake, fact-finding) that parallel both the case processing systems and the functional structure of each office. What this means is that management and accountability are logically tied in with the administrative and the functional structure of an office. (Emphasis in the original) (OPM Rept. No. 1, Jan. 1981, p. 7).

Thus at the time I left the Commission in early 1981 its Management Accountability System was among its strongest features. Yet by the time Mr. Thomas arrived almost a year and a half later, he claimed in his testimony that there was "an overriding lack of strong management accountability throughout the Commission," which he concluded was because "the whole focus has been on meeting quantitative goals." (DLR, 4/9/81, p. E-2) He reported "little emphasis on the quality of work produced . . . the managerial capability of supervisors, or the responsiveness of staff to policy direction." (Id.) This description is so at variance with documented changes in management accountability after 1977, especially the introduction of quality performance indicators, that I am left to believe either that they were dismantled or weakened during the sixteen months the Commission was without a permanent chair or that Mr. Thomas had not had time to familiarize himself with the details of the Management Accountability System (MAS), including its strong and explicit quality controls. Given the timing of the June hearing, the latter is probably the case.

To be sure EEOC Management Accountability Plans had strong numerical objectives as well. These were not abstract or inflexible but were drawn from actual EEOC experience and were always subject to change if erroneously set too high, if conditions changed, or if other legitimate reasons were offered for failing to meet them. Government has only lately come to understand the importance of quantitative measures, although many private businesses, disciplined by survival needs and profit margin considerations, could not succeed without them. Moreover, the Civil Service Reform Act of 1978 contemplates just such numerical productivity measures. In its report on EEOC, OPM reported that "almost every feature of EEOC's management reform can be found in the Civil Service Reform Act of 1978." (OPM Rept. No. 1, pp 13-14) The desire to avoid the rigor inherent in numerical indicators is understandable. But this inevitably leads to reduced management accountability in an agency like EEOC, with the necessity to move large numbers of cases in a workload mandated by statute and thus largely outside agency control, except through numerical management accountability.

But Mr. Thomas is simply wrong that there were not also strong quality controls. So important was quality control to the success of the agency reforms that we established an office of Operations Evaluation separate from the regular audit office in order to provide more regularized qualitative management accountability and to involve managers themselves in self-initiated management improvement and self-audits. OPM reported that this office "conducts annual on-site reviews to evaluate operational compliance in field offices and effectiveness of the charge processing systems." (Id. at 7) Moreover the OPM evaluation of EEOC included a section entitled "Quality Assurance" where it reported that the EEOC

> conducts audits of sampled cases processed in the field offices. And it expects the field to conduct "self-audits" once in two months on a sampling of cases processed by staff. In fact the rapid charge processing systems seem to have a built-in quality assurance in that collective reviews of problematic cases are conducted by the Management Review groups . . . , or by a supervisor with an Equal Employment Specialist who handles a difficult case. (Id. at 9)

The performance elements of management plans all contained qualitative measures. For example the quality of investigation was indicated by a review of case files and the actual observing of complainant interviews, of fact-finding conferences, and of settlement discussions. Moreover performance plans included such qualitative evaluations of management ability as communication with staff, training of supervisors and accomplishment of improvement projects for problems that arose in the office. Finally, there were the self assessment audits designed by the Office of Operations Evaluation and recognized in the OPM report (Id. at 9). The self-audits were exclusively quality audits since the Management Information System provided the necessary information for self analysis in meeting quantitative goals. And self-audits were an important management tool for use by the director and his own supervisory staff in the periods between the more extensive annual audits by the Office of Operations Evaluation.

The suggestion that quality control requires the sacrifice of quantitative measures is inaccurate. Improvements in management at the EEOC were strongly related to the design and installation of a computerized complaint tracking information system stressing quantitative goals that was welcomed by line managers and was a major contribution to the overall improvement of agency work. When we came to EEOC there were three different and unrelated systems for tracking and reporting information, none of them accurate. OMB reported that EEOC had achieved an "important breakthrough "in" rapid and accurate reporting by field offices on workload and performances." (Man. Memo, p. 1) Its evaluation explains the functional importance of quantitative measures:

> With program data received on a daily basis and reports prepared monthly, the central office has a current overview of progress and problems and can take timely action. If an office experiences a significant increase in new charges, it may be directed to shift staff resources from resolving charges in the backlog to factfinding. In order to maintain

> the overall agency goal for reduction in backlog, some of the office's backlog may then be distributed among other offices. If analysis indicates that an office is not meeting established time frames for factfinding or continued investigation, resources may be shifted to the lagging area, or a team of senior staff may be asked to make specific recommendations for improvement. If analysis indicates that the proportion of charges resolved during factfinding is significantly less than the agency norm, it may be directed to strengthen its efforts to achieve resolution at the factfinding stage. EEOC's rapid charge processing system has made the difference in turning around a case load that was in deep trouble. (Id.)

Because EEOC is an especially difficult agency to manage,we found that the most rigorous management tools were essential for success. EEOC staff performed superbly when top management made it clear it believed that managers and staff could meet high quantitative and qualitative objectives set in consultation with line managers themselves. EEOC reports on case processing show that these high standards continue to be met in critical areas. I know that the Committee and the Commission will be striving to maintain and strengthen Commission efforts. May I wish you every success.

Sincerely yours,

Eleanor H. Norton

Eleanor Holmes Norton

ENH/ltd

Senator NICKLES. The committee will be adjourned.

[Whereupon, at 10:56 a.m., the committee recessed, to reconvene at the call of the Chair.]

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